THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.
Minutes - The Faculty Senate
Regular Meeting, Friday, December 11, 1970
Faculty Conference Room, sixth floor of the Library

Minute 1 President Elliott presided. The meeting was called to order at 2:10 p.m.

Minute 2 After a brief but brilliant discussion of exclamation points by Professors Morgan, Highfill and Reesing, the minutes were approved as distributed.

Minute 3 The President asked Dr. Bright to take the Chair and to conduct any discussion that might follow his statement on financial problems of the University.

The President began his statement by saying that, in preparation for the report, Professor Stevens and other members of the Executive Committee (and still others on a solicited basis) had raised some specific questions (letter December 8, 1970, attached). He said he would begin with them, answering as quickly as he could so that other members of the Senate could ask additional questions.

1) Q. How important is the College of General Studies to the financial stability of the University?

A. The College of General Studies has contributed more than a million dollars a year to the general operating budget of the University during each of the past three years.

2) Q. Eric Wentworth's Washington Post article said that, "The SEAS' future role, at least as a separate GW venture, is on trial." The Dean does not present that story to the Faculty. What is the situation? What are the conditions of the trial?

A. First of all, Wentworth's use of these terms is his own, not mine or anyone else's who talked with Wentworth. He had several discussions on campus; this was his interpretation. I would say that SEAS is no more on trial--perhaps not as much--as for example the Medical School or the University itself. We are all on trial within the context of viability of the financial strength of the University. Also, Mr. Wentworth's article was instituted by Wentworth and was not triggered by anything which happened here.

3) Q. Does the University have conflict of interest regulations regarding personnel who make decisions as to purchasing, borrowing, and spending? If so, what are the regulations?

A. The only regulation is that no one who collects money--the Treasurer, the Financial Office--has responsibility for disbursing it. Beyond that there are no regulations except those imposed by the District of Columbia.

4) Q. Does the University have competitive bidding regulations regarding purchases? What are the regulations?

A. I have with me a copy of The George Washington University Procurement and Supply Manual which was completed last summer. This is part of the work with

the Stanford Research group adopted last summer and distributed to Vice Presidents, Deans, Directors, and administrative personnel. It is available to anyone who wants it.

5) Q. What means are available to people who wish to make constructive suggestions about economizing and/or employment of more effective management techniques?

A. I must say so far as I know any and all levels of the University are open to such suggestions. It has been my observation that when someone suggests how to save money, it is not how it can be saved closest to home. It is my wish that every officer would welcome suggestions from everyone.

6) Q. What specifically can the Consortium do to help?

A. The Consortium can be the means by which we can increase the quality of a number of programs and at the same time reduce costs. It is a large subject. We have been discussing this question. It is a matter which must receive our most serious attention and our efforts should be directed to improving, implementing, even expanding programs, while saving money.

7) Q. What impact will the financial state of the University have on research financing?

A. I would reverse the question: What impact will research financing have on the financial state of the University? It already has had serious effects on the University and is seriously curtailing research and scholarly activities. Let me add one comment: we know of no way the University operating funds can pick up funds which are lost from other sources.

8) Q. Could we have a simple presentation separating administrative costs from instructional costs?

A. I have been somewhat of a student of costs for twenty years. Looking at such figures from various sources, about 60% of the total operating budget goes to direct instructional costs, 40% to overhead, administration, etc. I have asked Dr. Bright, Mr. Johnson and Mr. Birnbaum to get together comparative figures for the past five-ten years in relation to two services--cost of administration, and cost of instructional services. I would point out one item which it is difficult to control or report. When a grading system is changed in a college, our beleagured Registrar is faced with putting these changes into practice. Each of these adds an increased cost to his office which in many cases is unavoidable. This is a kind of administrative cost in response to an instructional need. When the comparative figures are available I will have them distributed with the Monday Report.

9) Q. Have we been overly paternalistic and extravagant in some of our personnel policies?

a. Minimum wages are greater than the law requires?
b. Educational benefits for non-academic personnel?
c. Vacation and other benefits for non-academic personnel beyond union requests, that is, opening the contract at our initiative to inject benefits?

d. 7% across-the-board cost-of-living increase in January 1970 for non-academic personnel in certain categories, whereas substantial blocks of academic personnel received increases (7/1/70) that were less than the cost-of-living.

9) A. My answer has to be "no." I am convinced we have not been paternalistic or extravagant. The scarcity of labor and cost of living are the basic defenses for actions the University has taken. In a sense, while faculty compensation moved to the "A" scale of AAUP, other salaries and wages have moved upward also, and for this I am proud.

10) Q. How economic has been our allocation of space in the University Center Building--bookstore, meeting rooms, halls, instructional areas? Do we really use an academic management point of view for our new space? Who does it?

A. I am not going to try to answer this question. I am not sure what it means. The University Center is a self-financing building and does not draw upon the academic budget except as academic departments use its facilities.

11) Q. What are the facts about the September 1970 enrollments that have precipitated
a. the hiring freeze
b. the Washington Post interview?

A.b. September registration did not trigger the Wentworth article. Wentworth initiated the article. He came to me and said there was a lot of publicity now around and more coming (the Carnegie Commission Report) about the financial plight of the universities. He'd like to do a study of this situation. His problem: "I can't get college people to talk to me. If you will, I would also ask that you give me entrée to talk to others on campus." He started with the financial plight of "The University." It turned out to be a GW article. The Carnegie Commission has now reported. There is still a great deal of information from other universities not yet released. Mr. Wentworth's story was ahead of the field.

a. Because of September enrollments, our income was $250,000 net below expectations. Having budgeted a small deficit under Unfilled Positions, it was not possible to look to that route to make up another $250,000 loss, therefore the hiring freeze was instituted.

12) Q. Who polices the administrative costs? Some Rice Hall offices have a tomblike quality--much space, idle people. What are the results of this policing of administrative costs, that is, what are the comparative costs year by year for recent periods?

A. This is the study I am now getting ready by way of the Monday Report. There are evenings when I leave at 10:30 or mornings when I come in early when the administrative offices seem tomblike. It was not tomblike recently in a room of the Rice Hall administrative offices when twelve preparatory schools were interviewing and visiting here. Instead of tomblike it was too crowded.

13) Q. What are the plans if the Federal Government does not grant a subsidy asked for the Medical School? When would the plans be implemented?

14) Q. Who plans and who administers the Medical School budget? By what process is this done?

15) Q. What part of the Medical School budget is allocated to service to the community? Who pays the bill for this service?

A. These three questions concern the Medical School. The Medical Center operates on a separate budget and has for four years. One of my first acts was to ask the Board to separate fiscally and financially the Medical School budget from the rest of the University budget, lest the finger should always be pointed at the Medical School. If my information is correct, Congress is taking another vote this afternoon on the Medical School and I am anxious to see the results.

16) Q. What is the anticipation as to the balance of costs and revenues over the next five years University-wide?

A. Costs and revenues will be balanced.

17) Q. If growth in costs continues to exceed growth in revenues, what steps are planned to reduce costs and to increase revenues:

a. Modify building plans?
b. Continue hiring freeze?
c. Increase teaching loads?
d. Lower annual raises?
e. Terminations?

A. a. No commitments to buildings have been made beyond the Library. There will be no new commitments until money is in hand for the building.

b. Yes.

c. This may be necessary. I would like to clarify increased teaching loads. From 9 to 12 hours or from 12 to 15 hours is not a proper identification of a teaching load. Dr. Bright has said a number of times that if this University had better balance in the distribution of students from course to course, teaching loads would not be a serious problem. If professors could meet 90-100 students a week in three-hour courses (for example, 1 course of 60, 2 courses of 15-20), then the financial problem would be greatly alleviated. So, instead of increased teaching loads of 12-15 hours, I would like very much to think of Consortium alternation and rotation as means to distribute the teaching load more equitably.

d. Possibly.

e. I assume reductions in staff and levels of service will precede any terminations. There should be natural attrition before termination.

18. Q. The Treasurer's Report dated June 30, 1970, makes no reference of any kind as to financial troubles to come. What has substantially changed the situation since June 30?

18) A. The fall registration changed it. The Treasurer's Report is an auditor's report of transactions of the past year. It does not combine a projection of fiscal plans as is customary with the president's annual report of a corporation or the usual annual report of the president of a university. My annual report will likely contain such references in the future.

19) Q. What are the University's plans for graduate education and for undergraduate education? Expand? Reduce? Keep stable? What are the relative costs?

A. I must relate my answer to the Consortium, and unfortunately time does not permit its adequate development here. Graduate and professional enrollments will inch up over the years. An increase of 1% may be expected every two or three years. It is to be hoped that through consolidation and coordination within the Consortium strengthened programs will result. Undergraduate enrollment will remain stable. I don't believe we can foresee a time of growth of undergraduate enrollment. In some areas small cutbacks are planned. The Law School overregistered this fall. It is their desire to cut back a few students, perhaps 75-80 in another year.

20) Q. Must each department be self-supporting?

A. No. Some departments cannot be self-supporting. I must say financial considerations must take their place alongside academic considerations for development and growth in the future.

21) Q. Does the preliminary report of the Subcommission on Governance contain any suggestions which the Administration favors at this time?

A. The Commission on Governance was appointed by me on the authority of the Board of Trustees, and having appointed such a Commission I don't want to stand over its shoulder approving or disapproving preliminary reports. I have no comment, therefore, on these matters. However, I anxiously await results of the Commission's study.

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There are three additional points on the financial situation of the University which I would like to call to your attention:

1) With the business turn-down or recession, and with increased attractiveness of community colleges and public institutions, I very much fear we may be pricing ourselves out of business. I look around and note that some private institutions may have already reached that point. Long Island University a year ago enrolled a freshman class of 2600, this fall 1600. Hofstra University is down 400-600. Of 15 private colleges in the State of Connecticut, all are down except Yale, Wesleyan, and Connecticut College for Women. Trinity lost 75-100 during the month before school opened in September. The State of Missouri has 14-15 private colleges, and these institutions have 7400 vacancies this fall. St. Louis University is down by 1000. With $8\frac{1}{2}$ million students in colleges and universities, there is a great shift from private to public institutions. Clearly in many cases it has come down to the students' families not having enough money for private colleges.

The Carnegie Commission report says 1540 campuses are facing hard times financially out of some 2500 four-year colleges and universities.

2) Some two years ago, I began to talk with one or two foundations about academic budget making, planning costs, etc. We persuaded the Ford Foundation to give us a small grant to study budgeting as related to academic programs. The other Consortium Universities were included in the study in order that such benefits as might be found would be shared. The study is now in its second year, directed by Dr. Bright with Mr. Johnson and appropriate staff and consultants participating. It will be completed by summer. I think we will know more about costs of programs and hopefully allocation of funds within academic institutions by the time this is completed than 95% of the universities in the country. It is timely and it is basic to our problem.

3) Important to me and important to you--I think to everybody in this room--is the fact this University has made considerable progress during the last ten years in academic development and in economic strength. I would like very much to protect that progress so the institution will not slide back in this critical period. We want not only to survive but to preserve the growth of the ten years.

I wanted the faculty as represented by the Senate to know that this University is in a critical period. If we were faced now with the kind of problem facing St. Louis and Long Island Universities--and others--our situation would be desperate. I would like to avoid that desperate situation. To that end I have taken actions such as the hiring freeze.

Mr. Chairman, I will entertain questions as long as the group would like or be happy to discuss this again at a future meeting should the group wish to proceed with other business this afternoon.

Q. from Professor Rashid: Comparative costs of undergraduate and graduate education?

A. For years we have been accustomed (with no hard facts) to say graduate costs are greater than undergraduate. But costs depend so much on total balance of the school or department. Dr. Bright and Mr. Johnson are wrestling with that right now. We shall have much better data within a few months than is now available so let us wait rather than make estimates or guesses at this point.

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There were no further questions. Professor Stevens expressed to President Elliott the thanks of the Senate for his report. The President resumed the Chair.

Minute 4 Professor Wood moved the adoption of Resolution 70/5 (Alternative A). Professors Kirsch and Morgan seconded. Professor Park then spoke briefly in favor of Alternative A.

Professor Robinson moved the adoption of Resolution 70/5 (Alternative B) as a substitute for Alternative A.

After discussion of Professor Robinson's motion by Professors Robinson, Kirsch, Wood, Griffith, Allen, Cottrell, Perros, Park, Morgan, President Elliott, Professors Highfill, Shane, Reesing, Sharkey, LeBlanc, and Mr. Stephen Phillips, Professor Kirsch moved to close debate. Professor Stevens seconded, and the motion to close debate carried. The Chairman put the question on Resolution 70/5 (Alternative B) and the motion was defeated 15 to 9.

Debate resumed on 70/5 (Alternative A) with discussion by Professors Perros and Park.

Professor Robinson moved to delete Sec. 105. Professor Fox seconded. After discussion by Professors Morgan, Griffith, and Park, Professor Wood and his seconder accepted the following: change the title of Sec. 105 to read "Standards of Fairness and Student Rights in Disciplinary Cases"; strike the first 16 lines of Sec. 105; retain the last two sentences of Sec. 105 beginning "The University disciplinary system..." and ending "to the end that a just and fair decision may be obtained."

In the following motions the seconder's name appears after the slant (/).

Professor Robinson/Fox moved to delete Sec. 106. The question was called and the Robinson motion was defeated.

Professor Kahn/Fox moved adoption of Alternative 1 attached to the agenda for the November 13, 1970, Senate meeting, with Par. 2 changed to read: "Conditions of continuance are deferred for consideration of the Faculty Senate." After discussion by Professors Morgan, Highfill, Rashid and Nutting, the Chairman put the question and the motion was defeated.

Professor Robinson/Fox moved that in Sec. 202.2, line 4, the word "seeks" be struck and the words "certifies that" be substituted; in lines 5 and 8 after the word "expulsion" the words "or suspension" be added. After discussion of the motion by Professors Wood, Morgan and Robinson, the question was called and by a vote of 12 to 9 the motion carried.

Upon a request for information by Dr. Vahouny, the Chairman ruled it was his understanding that Professors Wood and Robinson had accepted Section 202.2 as amended. Dr. Vahouny moved to reconsider the vote. Professor Griffith seconded. The motion to reconsider carried. After further discussion of the Robinson motion on Sec. 202.2 by Professors Robinson, Allen, and Fox, the question was called and the amendment carried 12 to 11.

Discussion returned to the original motion of Professor Wood. After comments by Professor Sharkey, Nutting, Robinson, Fox, Park, and Allen, Professor Allen/Vahouny moved to adjourn. On a vote of 12 to 11 the motion was lost.

Dr. Kramer/Morgan moved that Sec. 202.2 be amended by inserting the words "greater than one year" after the word "suspension" in lines 5 and 8. After discussion by Professors Park, Kirsch, and Fox, Professor Fox asked the Chairman to rule on the

question of whether the suggested amendment was really a technique to reconsider. The Chairman ruled that a suspension of more than one year made a significant difference in the authority of the Court and that the motion was therefore in order. The question was called and the amendment carried.

Professor Robinson/Kirsch moved to strike from Sec. 223.3 the clauses reading "to issue declaratory judgments; to issue orders to persons and organizations in the nature of mandamus, prohibitions, injunctions and certiorari;" also that the last sentence be struck. Professor Wood and the seconder accepted the amendment.

Professor Robinson/Highfill moved that in Sec. 601.1 the word "primary" be deleted from line 2. Professor Wood and the seconder accepted.

Professor Robinson/Highfill moved that the word "shall" be stricken from Sec. 601.2, line 3, and the word "may" be substituted. The question was put and the motion was lost on a 9 to 9 vote.

Professor Fox/Robinson moved to delete Sec. 211. After discussion by Professors Morgan, Fox, Griffith, and Reesing, the question was called and the motion carried.

Professors Robinson/Nutting moved that Sec. 219 be deleted. After discussion by Professors Park, Allen, and Fox, the question was called and the motion carried.

Professor Robinson/Fox moved that Sec. 202.1 be amended by striking the third sentence and also by changing the last sentence by striking "Once the hearing has begun," and inserting "Unless" before "the option....embarrassment is real." The question was put and the motion was lost.

After it had been pointed out that the document would now need to be renumbered, Professor Stevens/Wood moved that all necessary corrections and changes in numbering be made by Professor Park in cooperation with Miss Royce after final disposition of the original Wood motion. The motion carried.

Professor Robinson moved that the last sentence of Sec. 103 be changed to read "Nevertheless, persons responsible for drafting rules and requirements should make them reasonably definite." Professor Wood and the seconder accepted the amendment.

Professor Robinson/Bergmann moved the deletion of Sec. 101 and 102. The Chairman ruled the motion should be divided and each section considered separately. After discussion of Sec. 101 by Professors Nutting, Kirsch and Robinson, the question was called and the motion was defeated. After discussion of Sec. 102 by Professor Robinson, the question was called and the motion was lost.

After further discussion of Resolution 70/5 (Alternative A) by Professors Fox, Nutting, Morgan and Stevens, the question was called and the motion carried.

(Note: Part I of the final report of the Ad Hoc Committee on the Judicial System, as amended by the actions of this meeting, has been edited and corrected and is being distributed to the members of the Faculty Senate. Twenty-five copies of the complete report will be placed on reserve in the University Library for the use of the University community.)

Minute 6 There were no brief statements.

Minute 7 The Chairman adjourned the meeting at 6:27 p.m.

Frederick R. Houser

Frederick R. Houser
Secretary

Faculty Senate

December 8, 1970

President Lloyd H. Elliott
The George Washington University
Washington, D. C. 20006

Dear President Elliott:

As I suggested to you Monday morning, a group of interested Faculty have met and drawn up a list of pertinent (and impertinent) questions for consideration preliminary to your statement to the Faculty Senate on Friday, December 11. These haphazard and randomized questions are the result of a brainstorming session, and are difficult to assemble in organized form.

We realize full well that it will be impossible for you to cover all of the areas which are suggested. The group felt that perhaps it would be appropriate to suggest a followup to the Senate meeting in the form of a more comprehensive report to the full Faculty Assembly either at its regular meeting on February 9 or, if you would prefer, at a special meeting called for that purpose.

I look forward to your statement, and trust that these questions will help in some small way to convey to you the nature of the thinking of many members of the Faculty.

Sincerely,

Edwin L. Stevens
Chairman
Executive Committee

ELS:ehr
Enclosure
cc: Members of the Executive Committee

THE
GEORGE
WASHINGTON
UNIVERSITY
Washington, D.C. 20006

NOT PART OF THE MINUTES OF THE SENATE BUT A RESULT OF THE EXECUTIVE COMMITTEE MEETING ON JANUARY 5, 1971; filed here to show what action resulted from that meeting and to indicate the action proposed to the Board of Trustees. EHRoyce

January 5, 1970

President Lloyd H. Elliott
Rice Hall
George Washington University
Washington, D.C.

Dear President Elliott:

Enclosed is a draft of a resolution for the Board of Trustees in conformity with your suggestion.

I hope that it is satisfactory.

Respectfully,

David Robinson, Jr.
Professor of Law

CC: Vice President Smith
Professor Stevens

File

WHEAREAS, the University Charter provides that the faculty and the Board of Trustees each have certain disciplinary authority as to the students of the University; and

WHEREAS, the present system for discipline of students is scheduled to expire in large part at the end of the Fall Semester, 1970-71; and

WHEREAS, on December 11, 1970 the Faculty Senate approved extensive modifications of this judicial system to be put into effect as soon as is practically feasible; and

WHEREAS, the Board of Trustees believes it appropriate that the Faculty exercise supervision over the student judicial system, subject to such future intervention or other action, if any, as the Board of Trustees may decide upon; therefore

BE IT RESOLVED that the changes in the University judicial system dealing with student non-academic disciplinary offenses approved by the Faculty Senate on December 11, 1970 be placed into effect by the President of the University, effective at the end of the Fall Semester, 1970-71. The Faculty Senate is authorized to make such further changes and alterations in ~~this~~ this system as it deems necessary or appropriate. The foregoing authorization is subject to termination or modification at such time and manner as the Board of Trustees may elect.

File

THE GEORGE WASHINGTON UNIVERSITY JUDICIAL SYSTEM FOR NON-ACADEMIC STUDENT DISCIPLINE

Chapter 1. Policies, Principles, Rights.

101. Authority for Student Discipline. Ultimate authority for student discipline is vested in the Board of Trustees by the University Charter. Authority to discipline and control student conduct prior to action by the Board of Trustees is vested in the faculty of the University. The powers of the Board of Trustees and of the faculty may be delegated to such individuals, committees or organizations as the Board or faculty may respectively choose.

102. Student Regulations, Codes of Conduct, Policies. The general policy of the University is to put all special rules of conduct and requirements of students in writing and to publish such rules and requirements in a manner reasonably calculated to inform affected students. Prior to enrolling in the University students shall be informed explicitly that the University requires students upon enrolling to submit to its disciplinary authority, that the sanctions for violation of such rules and requirements may include permanent expulsion from the University and that such expulsion may make enrollment in another college or university very difficult, and that the University reserves the right to change such rules and requirements after the enrollment of a student. Students shall also be informed that regulations or requirements applicable only to a particular program, facility or class of students may not be published generally, but such regulations or requirements shall be published in a manner reasonably calculated to inform affected students.

103. Interpretation and Construction of Rules and Regulations. The general policy of the University to make special rules and requirements explicit does not constitute an undertaking to define breaches of discipline in exclusive terms. The purpose of putting such rules and requirements in writing is to give students general notice of limitations on conduct. Such rules and requirements should be read broadly and not construed narrowly, as a criminal statute might be read. Students shall be informed that the prescriptions and proscriptions are to be read broadly. Nevertheless, persons responsible for drafting rules and requirements should make them reasonably definite.

104. Implicit Authority, Implicit Notice, Customs and Conventions. The University is not an institution so alien and unfamiliar to students that every kind of offensive conduct or breach of discipline need be anticipated and explicitly forbidden. Such predictive rule-making is unnecessary and impossible. Broad conventions of social usage apply

within the University community, such as respect for other persons, for those responsible for University functions, and for property. Broad rules, merely reminding students of their obligations in this regard, should be incorporated in the general University regulations. In this sense, general notice should be given students of the authority implicit in faculty, administrators, staff and student employees and officers to exercise such authority as is reasonably required to fulfill their assignments. Similarly, the notice implicit in the customary procedures of a program or facility may be sufficient to give actual notice to students familiar with such programs of limitations upon their conduct.

105. Standards of Fairness and Student Rights in Disciplinary Cases. The University disciplinary system shall not be allowed to become excessively legalistic or adversarial, and technical variations from prescribed procedure will not invalidate a decision or proceeding unless significant prejudice to the student defendant or other party is the result of such variation. To this end, individuals and bodies delegated authority to make disciplinary decisions shall enjoy considerable discretion to interpret, vary and waive procedural requirements to the end that a just and fair decision may be obtained.

106. Disciplinary Action, Counselling and Educational Objectives. The University's interest in student misconduct involves five responsibilities of the University: the responsibility to create and maintain an environment in which inquiry, learning and scholarship may flourish; the responsibility to nurture and promote the health and growth of the individual student; the responsibility to provide opportunities for the development of intellectual, professional, social and recreational associations and activities within the University community; the responsibility to provide reasonable security to persons and property entrusted to or associated with the University; and the responsibility to provide a sound, disciplined and systematic program of instruction, examination and certification of achievement so that its functions as an institution of higher education may be fulfilled. These responsibilities may conflict when the needs of the individual student, or his conduct, vary sufficiently from the norm. Similar conflict may spring from the perceived needs or the conduct of groups of students. The University recognizes that there is no formula or set priority that it can adopt in advance, but that special cases may involve special treatment. Nevertheless, in general terms, the University must commit its policies and resources first of all to protect and promote academic freedom and its associated ideas and activities. More than anything else, academic freedom is the peculiar and unique social trust of the universities. Next, as a general rule, the University must prefer those functions and responsibilities that are social or widely shared to those that are individual or narrowly held. Finally, in regard to the individual, when the University must choose between the interests of the deviant, exceptional or disturbed student and the interests of other students, the limited resourses of the University may require that the psychological, disciplinary, educational or other demands of such student be left to other agencies or institutions. These distinctions spring from difficulties the University has found in mixing incompatible functions or responsibilities. The University is uncomfortable in the role of a prosecutor of students, and finds such a role disruptive of other duties of counselling and guidance. Nevertheless, the University is a large, complex community of human beings and the disciplinary functions must be fulfilled. The University shall adopt, therefore, such

discriminations in assignment of duties as will minimize the conflicts of interests and functions described above.

107. Student Participation in the Disciplinary Process. The University believes that students have an important interest in and valuable insight into student misconduct. The University has adopted a policy of and provided a mechanism for the participation of students in the formulation of general standards of student conduct. The University has experimented with students as decision-makers in cases of misconduct tried in various areas of and at various levels of University life. The policy of the University is to utilize students actively in the disciplinary processes. Nevertheless, the University recognizes that interests of individual defendants or of the institution may outweigh thevalue of student participation, as when the defendant may prefer the privacy of an administrator's hearing or when student participants' resignations, academic demands, disorganization or other factors make a timely or fair processing of a case impossible. While declaring itself in favor of student participation in the disciplinary process and declaring a policy that will make active use of students, the University reserves the freedom to take, in extraordinary circumstances, those steps reasonably necessary to assure the efficient conduct of disciplinary procedures.

108. Civil Authority. The University enjoys no special status in regard to civil or criminal law. The University cannot prohibit the enforcement of law on the campus or against its personnel. It may exercise a very limited control over police action on its own property, but the campus is thoroughly broken up by public streets. In a time of widespread civil disturbances, conduct that might in more peaceful times be left to University discretion or discipline may lead to arrest and prosecution by civil authorities. The University regrets the tension and conflict, and the ambiguity in students' minds as to who has authority over them. For that reason, the University shall call this matter to the attention of students, and announces that its policy is against the use of the police of the civil authorities or of the civil courts unless serious risks to the objectives outlined in Section 106 above make such use clearly advisable.

109. Disciplinary Authority Not Exclusively Judicial. The adoption of a scheme of student courts and disciplinary procedures does not relieve faculty or administrators of their primary responsibilities for maintaining student discipline. Minor or specialty courts are included in the system to handle cases of primary interest to students, such as the student traffic court, the residence halls courts, etc. It seems appropriate for appeals from these specialty courts to go to an all-student court of broader University composition and perspective. The Student Court as a court of original jurisdiction and the bodies above it are provided for adjudicating serious charges of misconduct that may result in very serious penalties, such as suspension, expulsion or permanent reprimand. Between these two areas lie the vast bulk of student misconduct problems. It would be absurd to provide elaborate

procedural protections and costly hearing procedures to determine that a student seen breaking a window owes the University compensation for the window, or to reprimand a student for displaying disrespect in a classroom for his professor, or to warn a student to stop fighting in a dormitory or face possible suspension or expulsion. Faculty and administrators will be expected to continue to enforce University rules and regulations and to do so in a fair, reasonable and expeditious manner, and to exercise the inherent authority of their offices as required.

110. Referral of Cases to the Hearing Bodies. In establishing the hearing bodies it is not the University's intent to judicialize every infraction of rules or regulations. The intent is to provide an all-student adjudicatory body and a joint student-faculty hearing body that will try cases involving serious breaches of University rules, the violation of which may result in the imposition of penalties such as expulsion, suspension, permanent reprimand or other stigmatizing personnel action. The case in which expulsion is sought by the University will be tried originally by the Student-Faculty Committee on Appeals. Alternative sanctions for misconduct which may be imposed administratively include informal warnings, informal reprimands, letters of warning or reprimand to the student or to the student and his parents, and administrative probation. Whether an administrator should rely upon his inherent authority or seek the additional sanctions available through the hearing bodies must be a matter of discretion. The experience and advice of the University Representative, Section 209, should be sought in doubtful cases, since that officer must ultimately decide whether the case will be brought on behalf of the University. Some questions that reflect what should be the controlling considerations are the following:

(a) Is this conduct so injurious to the University or to members of the University community that a penalty as serious as suspension or expulsion should be sought?
(b) Is this conduct so symbolic or representative in character of misconduct to the University or its members that a serious penalty should be sought for its deterrent value?
(c) Is this student so recalcitrant and unresponsive to warnings and counsel that a serious penalty must be imposed on him to induce conformance to University rules?
(d) Is this student so seriously deviant or threatening to the University community that his temporary or permanent suspension or expulsion should be sought?

111. Subpoena and Contempt Powers. Courts and hearing bodies of the judicial system may compel attendance and testimony of students found reasonably necessary to the trial of issues and may exercise reasonable control over those before the court, including parties, witnesses, spectators and others present. Obstruction, disruption or recalcitrance may be controlled by the imposition of penalties reasonably proportioned to the offensive conduct, but the imposition of such penalties shall not be the function of the court or hearing body offended. The determination of whether an offense has been committed and what shall be the appropriate penalty shall be the responsibility of the court or hearing body having immediate appellate jurisdiction over the offended body. A separate action will be adjudicated and the University Representative will represent the offended court or hearing body.

112. Who May Appeal. It is the policy of the university to permit all defendants to disciplinary action in which they have been subjected to a significant injury, as contemplated in the Statement of Student Rights and Responsibilities, to appeal as a matter of right. All other parties, and non-parties significantly affected or injured by the outcome, may petition the next higher body, which body will hear the appeal at its discretion.

113. Disqualification of Decision Makers. The university requires members of all courts and hearing bodies to disqualify themselves whenever they feel that they cannot in good faith and with an open mind hear the dispute impartially and without prejudgment of the specific case before the body. If sufficient disqualifications reduce the court or hearing body to below its chartered quorum, the trial or hearing will be heard at the appropriate appellate level. If a member refuses to disqualify himself and a party objects, the remaining members of the court or hearing body will hear arguments and vote secretly as to whether or not the member must withdraw, a simple majority controlling. In the case of the Student-Faculty Committee on Appeals, the Student-Faculty Committee on Academic Discipline and the Special Student-Faculty Hearing Committee(s), vacancies will be replaced by the President of the University by interim appointments. The test for disqualification will include the following considerations:

(1) A member should not judge a case with a closed mind or irrebuttable presumptions of guilt or innocence of any defendant;
(2) A member should not judge a case in which his political opinions loom so large that they will control findings of fact and guilt or innocence or significantly distort his reading of law, regulations or university policy.
(3) A member should not judge a case involving a party so close to him personally, socially or professionally that his perception of evidence and law may be substantially distorted; and
(4) A member should not judge a case involving questions of law or procedure on which he holds conclusions so fixed and irrebuttable as to amount to a prejudgment of the case.

It is to be understood that in the close community of university life it will be expected that administrators, faculty and students may have general or even quite specific knowledge of the case to be heard. Such knowledge is not disqualifying so long as a fair and open-minded approach to questions at trial is possible. It is important that hearing officers with prior knowledge avoid acting on such knowledge without giving the defense an opportunity to rebut it, and that in cases decided on the record that such knowledge be fully developed on the record lest the hearing officer in such cases rely upon extra-record information.

Chapter 2. Organization, Sanctions.

201. All-Student Courts of Original Jurisdiction. A system of all-student courts with original jurisdiction over all non-administrative, non-academic disciplinary cases not otherwise excepted by Sections 202, 202.1, 202.2, 203, 204, 205, 206, 212, 218.2, 223.7 and 223.8 is established.

202. Optional Hearing Procedures. Certain choices of hearing procedures will be made available to the parties in the interests of privacy, fairness and preference for initial hearing officers.

202.1 Student Defendant's Option. Student defendants will be permitted the option of having their cases tried before a university administrative officer instead of a student court. The official notifying the student of the charge against him will inform him of this option. The presiding officer of the student court of proper jurisdiction will also inform him of this option prior to the beginning of the trial or hearing. Once the hearing has begun, the option may be exercised only for good cause, as where a student objecting to the disclosure of certain evidence that may be of significant personal embarrassment to him is overruled by the court and the court is persuaded that the risk of embarrassment is real.

202.2 University Representative's Option. The University Representative may bring cases alleging violations of university regulations in the Student Court or lower courts as he deems appropriate, provided that in any case in which the University Representative certifies that a penalty of expulsion or suspension greater than one year may be appropriate the case will be brought for the initial trial before the Student-Faculty Committee on Appeals or the Vice-President for Student Affairs as the student may prefer. If either of these bodies feels that a penalty of expulsion or suspension greater than one year would be excessive on the face of the complaint, it will refer the case to the Student Court.

203. Failure of Student Court to Exercise Timely Jurisdiction. For each student court of original jurisdiction a set of timely actions will be established to determine deadlines for the acceptance of jurisdiction, the issuance of notice, the beginning of the trial, and other appropriate matters. The failure of any student court to act within the schedule of deadlines established will constitute a surrender of jurisdiction over the case. Upon the failure to exercise jurisdiction or to proceed in a timely way, the case moves to the next higher court or hearing body and the schedule of actions binding that body begins to run upon receipt of the case or the filing of a complaint by the University Representative with the higher body, whichever is earlier.

204. Emergency Procedures When Docket Becomes Overloaded. For each hearing body a docket backlog limit will be established. When pending cases exceed that limit, university administrative action may be taken to assure the timely and efficient processing of cases.

204.1 Special Student-Faculty Hearing Committee(s). Whenever the backlog of pending cases exceeds a limit to be set by rule by the Committee on the Judicial System a special committee will be established as provided in Chapter 5 of this Resolution.

205. Private Bodies, Organizational Discipline, Etc. The jurisdiction of each all-student court will be defined in its charter. College, University, student, professional and social organizations will not be deprived of their power to discipline members or otherwise control their own affairs without an explicit and authoritative withdrawal of such power.

206. The Student Court. An all-student court with original jurisdiction over all non-academic disciplinary offenses for which significant sanctions other than expulsion or suspension for one year or more may be imposed is established and shall be known as the Student Court. The Student Court shall also be vested with appellate jurisdiction over specified lower courts as otherwise provided herein. The Student Court shall have jurisdiction over violations of all university-wide regulations when such violations are not explicitly assigned to another court. The Student Court shall be composed of five students and a non-voting Law Advisor. Jurisdictional limitations of Section 201 and the sections cited therein apply to the Student Court.

206.1 Appointment to the Student Court. The President of the University will appoint five students, at least two of whom must be from the law school, from a list of nominees provided by the Committee on the Judicial System. The President may refuse all or some of the nominees and request additional names. The appointments will be for a term of one calendar year and one month, during the first month of which term the prior members will sit as non-voting observers of the new members of the court. The appointments will begin on the first day of March of each year. The Law Advisor will be a faculty member trained as a lawyer and a member of the bar experienced in litigation. He will be appointed for a term of two years, to begin on the first day of November.

206.2 Clerical Support for the Student Court. The Vice President for Student Affairs will provide clerical support for the Student Court and other courts as provided herein, for the Committee on the Judicial System, and to perform specific functions as provided in Section 208.

207. Committee on the Judicial System. A permanent committee on the judicial system is established, to be called the Committee on the Judicial System. The committee will be composed of a Chairman; two additional faculty members; one of the student members of the Student-Faculty Committee on Appeals as elected by the majority vote of all members of that committee; the Chairman of the Student Court; and one student member from the campus at large. The Chairman will be appointed by the President of the University from the members of the Faculty Senate. The two additional faculty members will be appointed by the President from a list of four names provided by the Faculty Senate. The term of all members will be for one year, beginning the first day of May. The present student court and the present Student-Faculty Hearing Committee will provide the student judicial members for the first Committee on the Judicial System.

208. Executive Secretary to the Judicial System. The Vice President for Student Affairs will provide clerical support for the entire judicial system of student courts, the student-faculty appellate committee, the Committee on the Judicial System, and, to the extent necessary, the Vice President for Student Affairs or his agent when the Vice President or his agent is serving as the administrative hearing officer in a case of student discipline.

209. University Representative to the Judicial System. The impartiality of decision makers in the student disciplinary system is very important. To assure such impartiality, the functions of case adjudication and of case presentation should be clearly separated. The university provides for such separation of function by placing the university officer responsible for the investigation of complaints and the prosecution of charges completely outside the division of Student Affairs, since the division frequently provides the adjudicator and always provides systematic clerical support to the student judiciary and the student-faculty appellate committee. This separation also serves to insulate the office of Student Affairs from the conflicts of interest inherent in requiring it to counsel and advise students and, simultaneously, prosecute cases against such students. The officer of the university responsible for investigating complaints and prosecuting charges will be known as the University Representative to the Judicial System. The University Representative may utilize students, faculty, administrators, or non-university personnel as assistants. The University Representative will be appointed for a term of three years by the President of the University, to take office on the first day of May, subject to confirmation by the Faculty Senate. The University Representative will be relieved of academic duties as required by the President of the University. He will perform his duties under the Provost, the Vice President for Administration, or other administrative officer as designated by the President, but not under the Vice President for Student Affairs.

210. Student-Faculty Committee on Appeals. A committee of four students and four faculty members, at least one of whom will be a tenured member of the law faculty, will be named the Student-Faculty Committee on Appeals and will have appellate and limited original jurisdiction as follows: original jurisdiction over all cases in which the University Representative certifies that expulsion or suspension greater than one year may be appropriate as a penalty; jurisdiction for the trial process whenever a party petitions the court to accept such jurisdiction as provided in Section 219.(3); interim appellate jurisdiction as provided in Section 219.; appellate jurisdiction as otherwise provided in this chapter; and jurisdiction over novel and extraordinary matters not appropriate for trial by the Student Court. The President of the University will appoint the members from lists of five or more faculty nominees provided by the Faculty Senate and of five or more student nominees provided by the student assembly - or in the absence of such a body, by the student members of the Committee on the Judicial System.

The President may refuse all or some of the nominees and may request additional names. Appointments to the Committee will be for one year, to begin on the first day of May. The Chairman of the Student-Faculty Committee on Appeals, named by the President of the University, will be a tenured member of the law faculty. An acting chairman will be appointed by the Chairman as required. If there is no Chairman, an Acting Chairman may be appointed by the President of the University, but such officer may not serve for a period longer than that determined by the next regular meeting of the Faculty Senate, at which meeting the Senate must provide the President with a nominee for the Committee facancy.

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212. Special Courts. Such special courts of limited jurisdiction as may be required by the University, its divisions and activities, or by student organizations and activities will be established individually by the Faculty Senate by resolution approving charters for such courts. The charters of such courts will include the following: Name of the court, jurisdiction of the court, authority in the University for establishing such a court, appointment procedures for members of the court, procedure for adopting judicial procedures, statement of rights of defendants in such court, voting procedures of the court, reporting procedures on cases and appellate procedures from such court. Approval of the Committee on the Judicial System will normally be required before a request for such a court will be approved by the Executive Committee for the agenda of the Faculty Senate.

213. Special Courts - Exempted. With the consent of the Student Court, special courts, organizational courts, specialized hearing bodies and other adjudicators may use the Student Court as an appellate body. Appeal as a matter of right to the Student Court, however, is available only to chartered courts so authorized. The power of the Student Court to make binding determinations of questions submitted to it from non-chartered bodies is vested only by the consent of the parties in dispute. The Student Court does not have the inherent power to review decisions of campus organizations not subordinated to it by the Faculty Senate or the Board of Trustees. All students subjected to such special courts, organizational courts or private hearing bodies may appeal directly to the President of the University to seek his review of procedures and intervention. Such independent review and intervention is not available independently of the appeals procedures in the case of chartered courts and hearing bodies.

214. Presidential Appeals Board. Exercising the power vested in the faculty by the charter of the University, a final appellate body short of the Board of Trustees, composed of four faculty members, chosen by the Faculty Senate, and the President, is established and is named the Presidential Appeals Board. The Board shall have broad discretionary powers to review findings of fact and of law, determine necessary exceptions to policies and regulations, and review sanctions imposed. It may refuse appeals, merely pass them to the Board of Trustees,

* Section 211 deleted by Senate action.

make recommendations to the Trustees, remand with instructions or hear the case de novo. It shall be the policy of the University, however, that the Board will act upon appeals from appellate decisions, in the absence of extraordinary and compelling circumstances, only when the record upon which the appeal is based shows a prejudicial and erroneous application of University policy, or clear evidence of bias or prejudice, or that the judgment is clearly erroneous on the evidence of the record as a whole. A broader discretion under ordinary circumstances is permitted in the review of the assessment of sanctions or penalties, but here, too, the policy of the University shall be that the Presidential Appeals Board should not act unless the record reflects bias or prejudicial misinterpretation of University policy. These restraints do not apply to appeals from the original decision-maker, whether that is the office of Student Affairs, the Student-Faculty Committee on Appeals, the Student-Faculty Committee on Academic Discipline, or other body.

215. The Board of Trustees. The Board of Trustees is always available to students, faculty and other members of the university community for a final appeal. The presumption of the Board, however, will be that the orderly procedures provided for hearing, decision and review are fair, sufficient and reliable. The Trustees will not consider appeals from the judicial system unless an extraordinary case of bias or error is alleged and persuasive grounds for the existence of such bias or error pleaded in a written appeal submitted to the Secretary to the Board of Trustees. No appeal will be heard unless the normal procedures for appeal have been exhausted unless the appeal for intervention or irregular consideration is accompanied by persuasive argument as to why the following of normal procedures will be futile, unconscionably wasteful or irreparably damaging to the appellant. Nevertheless, the Board of Trustees is determined that the judicial system will operate fairly, reliably and efficiently and makes itself and the Committee on the Judicial System available to hear and investigate all reasonable complaints suggesting significant bias, unfairness or irregularities in procedures or operations.

216. Appeals as a Matter of Right. A student who receives a significant penalty as contemplated in the Statement on Student Rights and Responsibilities, i.e., expulsion, suspension or permanent reprimand, may appeal the decision as a matter of right to the next higher authority or hearing body than that which originally imposed the penalty.

217. Appeals at the Discretion of the Appellate Body. A student or any other party, including the University, adversely affected by a final order, judgment or penalty of any court or hearing body acting as the trial court may petition the next higher authority for appellate review, such appeal to be heard at the discretion of the appellate body. Further appeals will be heard at the discretion of the appellate body petitioned. At its discretion, an appellate body may hear an appeal from any party

not adversely affected by the final order when the appeal is based upon allegations that established procedures were not followed to his significant prejudice or that actions taken against him, such as bringing the case to trial, were not within the authority of the University.

218. Order of Appeals. Actions taken at any hearing level as described in this section may be appealed to the next hearing level of the same class, subject to the exception provided in Section 218.2 as to questions of law, construction of regulations, and procedures. Three classes of action are established as follows: disciplinary, administrative and academic.

218.1 Disciplinary Actions. The hearing bodies of the disciplinary class will include all-student courts of original jurisdiction, the Student-Faculty Committee on Appeals, the Presidential Appeals Board and the Board of Trustees. The routes of appeals, unless otherwise provided in the charter establishing a hearing body, will be from Special Courts to the Student Court, from that court to the Student-Faculty Committee on Appeals, from that body to the Presidential Appeals Board, and from that body to the Board of Trustees.

218.2 Administrative Actions. The hearing officers of the administrative class will be the Vice President for Student Affairs or some administrator or faculty member or non-University person named by the Vice President for Student Affairs. The selection of the hearing officer will be made with special consideration of the provisions for disqualification of Section 113. The routes of appeal from the administrative hearing officer will be to the Presidential Appeals Board on all questions of guilt or innocence, findings of fact, appropriateness of the sanction, and allegations of bias or prejudice or other questions of suitability or fitness of the hearing officer. Appeals from final orders based upon questions of law, of construction of rules and regulations, and of procedures or student rights may be appealed to the Student-Faculty Committee on Appeals at the discretion of that Committee, as provided in Section 219, or to the Presidential Appeals Board at the discretion of that Board, as provided in Section 219. At its discretion, either the Student-Faculty Committee on Appeals or the Presidential Appeals Board, may, after hearing argument by parties, direct the appeal to the other appellate body, the issues to then be acted upon or not within the discretion otherwise provided that body. The purpose of the alternative routes of appeal for matters of law, of construction of regulations, and of procedures and student rights is to promote the uniform and systematic interpretation of such matters, but to permit an alternative route when necessary to protect the student rights of privacy, confidentiality and choice of an administrative decision-maker. Questions of law, rules and regulations construction, and of procedure and student rights which cannot be purged of sensitive matters that might significantly invade the privacy of the student defendant or of other students or persons involved in any way will not be heard by the Student-Faculty Committee on Appeals but will be referred to the Presidential Appeals Board upon the objection of any party, witness, person involved in any identifiable way or by the University on behalf of such persons not present. Appeals from the Presidential Appeals Board on administrative actions will be to the Board of Trustees.

218.3 Academic Actions. Appeals from the Student-Faculty Committee on Academic Discipline will be to the Presidential Appeals Board and from that body to the Board of Trustees.

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220. Appeals from Final Orders. For purposes of appeal a pragmatic test of finality will be applied. An order will be treated as final if it terminates the dispute between the parties before the court or hearing body; if it determines that a particular rule or regulation is valid, void or applicable to specific conduct when such ruling has significant effect upon organizations and activities which are party to the action even though the court may choose to delay fashioning an order disposing of the detailed claims involved; if an order is issued in regard to one or more parties separable from issues remaining before the court and the order appears to be final as to those parties; or if the order in question appears to be final as to some separable issue merely collateral to the issues remaining before the court though the court retains jurisdiction over the party or parties. These examples are illustrative, not exclusive.

221. Scope of Review Upon Appeal. The broad purpose of providing for appellate review is to assure all parties that the original findings of fact and law, the reasoned integration of them in an opinion and the imposition of sanctions or other solution fashioned by the court or hearing body are sound enough to withstand the scrutiny of a dispassionate and impartial reviewing panel. The extent of review is justified by the seriousness of the issues at trial and of the character of the sanction or order imposed.

221.1 General Policy on Remands. Cases on appeal will be corrected at the appellate level when justified by the considerations of urgency, complexity, fairness to the parties, efficiency of adjudication, savings of time or the requirements of justice, including the extraordinary taking of testimony, admission of new evidence or trial de novo. At their discretion, appellate bodies may remand a case, but shall do so with specific instructions so that deficiencies or misunderstandings may be readily corrected.

221.2 Reviewing Findings of Fact, Findings of Law, and the Logic of the Lower Court. When the trial body has an opportunity to determine the credibility of witnesses, reviewing bodies must give weight to the judgment of the lower court beyond the content of the testimony in a cold record. Additional weight must be given the judgment of the lower court when the appeal is not based upon a full record, as in the case of minor cases. The following guidelines are provided for reviewing authorities:

(1) Findings of fact will not be reversed upon review unless clearly erroneous on the basis of the record as a whole. Appellate bodies having authority to try cases de novo, when the record is unsatisfactory, may selectively recall witnesses and take additional testimony.
(2) Inferences from findings of fact may be reversed by the reviewing authority when it is left with the definite and firm conviction that the inference is mistaken.
(3) Findings of law and the reasoning of the lower court or hearing body are fully reviewable and enjoy no presumption of correctness.

* Section 219 struck by Senate action.

221.3 Grounds for Appeal. Parties seeking review of a decision, order or report will submit a written brief specifying the specific issues for which review is sought and the grounds upon which an exception to the finding or ruling of the lower court in each instance is taken.

221.4 Modifications of Lower Court Orders, Rulings and Penalties. The appellate body may, in its discretion, modify the order or ruling of the lower court, including the assessment of penalties.

221.5 Non-Prejudicial Errors in Procedure. The University in adopting an adjudicatory scheme with extensive participation by students and faculty recognizes that imperfections in procedures and errors in rulings of trial bodies are inevitable. Appellate bodies reviewing appeals based on technical, procedural or interpretative errors will act upon two principles: first, that the disciplinary format adopted by the University is administrative and not judicial in spirit and that considerable latitude of discretion must be permitted if excessive judicialization and legalisms are to be avoided; second, that only errors that significantly prejudice or may reasonably have prejudiced in a significant way the interests of a party are to be grounds for reversal or remand. Further, only the party so prejudiced may appeal such errors. Further, the provisions of this Resolution as to scope of review are to be applied in manner calculated to achieve substantial justice and not to results forced by technicalities.

222. Rules of Procedure. A set of rules governing general procedural matters will be prepared and maintained by the Committee on the Judicial System.

222.1 Special Rules. Individual courts and hearing bodies will prepare and publish special rules governing procedures peculiar to themselves, subject to the approval of the Committee on the Judicial System.

222.2 When Hearing Must Be Recorded. In all proceedings in which a penalty of permanent reprimand, suspension or expulsion is sought the hearing proceedings will be permanently recorded by tape or transcriber.

222.3 When Recording Is Not Made. When sanctions are imposed upon a hearing not recorded by tape or transcription, the hearing body or officer will include in his opinion sufficient detail as to the findings of fact, testimony and evidence as to permit the reviewing body to properly evaluate the findings in relation to the evidence.

223. Orders, Sanctions, Reports. The courts and hearing bodies have three general powers, the power to issue orders to persons and organizations, the power to impose sanctions, and the power to make investigations into and reports upon matters within their jurisdiction. Courts and hearing bodies at various levels have different degrees of these powers. All of the courts and hearing bodies are of limited jurisdiction as provided in this Resolution and elsewhere, the grants of jurisdiction including explicit and implicit powers.

223.1 Opinions, Orders, and Reports. Actions taken pursuant to disputes or trials before all courts or hearing bodies established by the Faculty Senate shall be accompanied by an opinion, order or report that shall include the following distinct sections: (1) a statement establishing jurisdiction over the parties and the matter in dispute; (2) findings of fact; (3) findings of law, rules, regulations, ordinances, etc., including rulings to which counsel took exception; (4) a brief discussion indicating the findings most central to the logic and conclusions of the court; and (5) the order of the court or hearing body. Remands will contain specific instructions as to correcting deficiencies, perfecting the record, or clarifying the reasoning of the court or hearing body.

223.2 Parties May Submit Trial Briefs and Draft Opinions, Orders and Reports. To facilitate the business of the Student Court, the University Representative will and other parties appearing before it may submit a memorandum in the nature of a trial brief summarily outlining the major legal arguments and critical issues of fact that the party anticipates developing in the course of the trial. Further, the University Representative will and other parties may also submit a draft opinion, order and report in a manner favorable to his position and in a form as required by Section 223.1. These papers will be presented to the Executive Secretary by some reasonable time set by the hearing body or Committee on the Judicial System so that they may be duplicated for opposing parties, intervenors and the members of the court. Amended papers may be provided the court during or after the trial or hearing but prior to the relevant decision of the court.

223.3 Orders. The courts and hearing bodies have the power to subpoena persons and University disciplinary records; to consolidate or separate issues and/or parties for trial; and to make such rulings and to issue such orders as are inherently necessary to the effective conduct of trials and hearings.

223.4 Sanctions. The following sanctions may be imposed upon students:

(1) Admonition: An oral statement to a student that he is violating or has violated institution rules.
(2) Warning: Notice, orally or in writing, that continuation or repetition of conduct found wrongful, within a period of time stated in the warning or in the indefinite future, may be cause for more severe disciplinary action.
(3) Censure: A written reprimand for violation of specified regulations, including the possibility of more severe disciplinary sanctions in the event of the finding of a violation of any institution regulation within a stated period of time or in the indefinite future.
(4) Disciplinary probation: Exclusion from participation in privileged or extracurricular institution activities as set forth in the notice for a period of time. For a determinate period students may be placed on probation, violations of which may result in suspension or expulsion or other disciplinary action.

(5) Restitution: Reimbursement for damage to or misappropriation of property. This may take the form of appropriate service or other compensation.

(6) Suspension: Exclusion from classes and other privileges or activities as set forth in the notice for a definite period of time not to exceed two years.

(7) Expulsion: Termination of student status for an indefinite period. The conditions of readmission, if any, shall be stated in the order of expulsion.

223.5 Sanctions as Applied to Organizations and Groups. The following sanctions may be imposed upon organizations and groups:

(1) Admonition: An oral statement addressed to the officers, members or faculty advisor that the organization is violating or has violated institution rules.

(2) Warning: Notice, orally or in writing, that continuation or repetition of conduct found wrongful within a period of time stated in the warning or in the indefinite future, may be cause for more severe disciplinary action.

(3) Censure: A written reprimand for violation of specified regulations, including the possibility of more severe disciplinary sanctions in the event of the finding of a violation of any institution regulation within a stated period of time or in the indefinite future.

(4) Disciplinary probation: Exclusion from participation in privileged or extracurricular institution activities as set forth in the notice for a period of time.

(5) Restitution: Reimbursement for damage to or misappropriation of property.

(6) Suspension: The organization banned from the campus for a fixed period of time, or an activity prohibited on campus for a fixed period of time.

(7) Expulsion: Termination of recognition of an organization for an indefinite period and a ban on its campus activity. The conditions of readmission, if any, shall be stated in the order of expulsion.

(8) Administrative Termination: Termination of recognition of an organization, with a ban on its activity on campus. This differs from 223.5(7) in that it is not punitive in character.

223.6 Reports. The courts and hearing bodies may investigate matters arising from cases before them or upon their own initiative when such matters fall within their jurisdiction. They may then issue reports and/or recommendations to appropriate persons and bodies, including the campus at large. However, if the conduct of the investigation or the content of the report or recommendations indicates a fixed conclusion, closed minds or a high probability of prejudgment, any cases arising out of the report or recommendations will not be tried before such court or hearing body but will be tried at the next higher body.

223.7 Non-punitive Administrative Actions. In the course of University administration, faculty and administrators may take actions that have some coloring of punitive action but which, in fact, are not taken with intent to punish the student. Actions of this kind are necessary to the reasonable operation of the University, but care must be exercised that they do not become devices for avoiding the safeguards established to avoid unfair, arbitrary or capricious invasions of student rights. An example is the refusal to reenroll a student with unpaid indebtedness to the University. Another example would be the refusal to reenroll a student of incapacitating psychological disturbances. Another example would be the requirement that a student pay for damage to University property caused by his negligence. These examples are illustrative, not a comprehensive description of these inherent administrative powers. These actions are not governed by the disciplinary procedures of the Statement on Student Rights or by the Judicial System.

223.8 Non-judicial Punishment. In the course of University administration, faculty and administrators may take actions that are punitive in character but which are not so serious as to justify referral to the judicial system. An example is the power of a member of the faculty to control conduct in his classroom. Another example is the withdrawal of privileges upon an administrative determination of misconduct, such as library privileges or the privilege of using the University Center for individuals or organizations that do not conform to the regulations of the Center. Actions of this kind are necessary to the reasonable operation of the University, but care must be exercised that they do not become devices for avoiding the safeguards established to avoid unfair, arbitrary or capricious invasions of student rights. Actions taken under such inherent power may give rise to complaints or appeals to the judicial system, the President, the Board of Trustees, or some appropriate Faculty Senate Committee, such as the Committee on Professional Ethics and Academic Freedom, when the student feels that the administrative punishment imposed upon him violated the protections afforded him under the Statement of Student Rights or under this Resolution. Whether the administrative punishment was proper or not will often depend not upon the sanction alone but upon a configuration of factors including the nature of the offense, the nature of the sanction, the situation in which the conduct occurred and in which the sanction was imposed. Sanctions that might be invoked without offending this Resolution or the Statement of Student Rights might include some form of each of the following listed under Section 223.4: (1), (2), (3), (4), and (5). Even (6) might be available to a professor in his responsibility for controlling the classroom. The powers of this section are broad and inherent in the offices and responsibilities of faculty and administrators, but because they are susceptible of abuse it is the responsibility of the faculty members and administration to exercise them with great care.

224. Punishment as to Specific Offenses. The Committee on the Judiciary and the Joint Committee of Faculty and Students will recommend to the Faculty Senate as necessary a schedule of offenses and appropriate maximum punishments. Amendments may be submitted at any time, but a comprehensive review of offenses and maximum punishments will be undertaken annually by these two bodies acting together and recommendations will be submitted to the Faculty Senate on the first day of December of each year.

224.1 Destruction or defacement of University Property. Full restitution shall be made to the University. When damage results from joint action of students or of students and others, individual students who actively and substantially participated in the misconduct that caused the damage will be liable for the whole or a proportionate share of it as the court or hearing body decides, provided that the University may not recover more than its total damage. In addition to restitution, students may be penalized under section 223.4 on the following basis: Minor damage, less than $50. total (not pro rata) - (1), (2), (3), (4). Serious damage, more than $50. but less than $100. (not pro rata) - (1), (2), (3), (4), or (6). Gross damage, more than $100. (not pro rata) - (1), (2), (3), (4), (6), or (7). To impose a penalty of (6) or (7) the court or hearing body must find that the student was not merely negligent or careless, but that the student acted with a conscious intent to destroy or deface the property or that the student acted with clear indifference to or disregard for the damage that might result from his conduct.

224.2 Disruption of academic activities. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts the normal academic activities of the University, he will be subject to the following penalties:

(a) Minor disturbances. Conduct that incidentally disturbs or disrupts some academic activity for a few minutes but which is not aimed at such activity and which does not seriously impair that activity or seriously invade the interests of those engaged in that activity. The following provisions of section 223.4 may be imposed: (1), (2) or (3).

(b) Major disturbances. Conduct that deliberately disturbs some academic activity or attempts to disturb the activity or which, though not aimed at the activity disturbed, is in violation of rules or regulations or is otherwise wrongful and is engaged in with a clear indifference to or disregard for the fact that academic activities may be disturbed. The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (6), or (7).

The greater the consciousness of the offense, the greater the indifference to academic freedom and the functions of the University, the more serious the penalty should be.

224.3 Disruption of Administrative Activities. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts the normal administrative activities of the University, he will be subject to the following penalties:

(a) Minor Disturbances. Defined analogously to Section 224.2 (a). The following provisions of Section 223.4 may be imposed: (1), (2), or (3).

(b) Major Disturbances. Defined analogously to Section 224.2 (b). The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (5) or (6).

The greater the consciousness of the offense, the greater the indifference to the costs to the University and its community, the more serious the panelty should be. The court or hearing body should treat Sanction 223.4 (5) in this instance analogously to Section 224.1, recognizing that disruption of work and employees results in a real economic loss to the University community for which those wrongfully imposing such costs should pay.

224.4 Disruption of Non-academic Programs and Events. If the court finds that a student acting alone, acting concurrently with others or in concert with others disrupts non-academic programs or activities of or at the University, he will be subject to the following penalties:

(a) Minor Disturbances. Definied analogously to Section 224.2 (a). The following provisions of Section 223.4 may be imposed: (1), (2), (3) or (4).

(b) Major Disturbances. Defined analogously to Section 224.2 (b). The following provisions of Section 223.4 may be imposed: (1), (2), (3), (4), (5), or (6).

The greater the consciousness of the offense, the greater the indifference to the costs to the University or others, the more serious the penalty should be. Restitution may be a proper remedy for the University but these proceedings will not be used to make the defendant compensate others for their injury.

224.5 Physical Harm to Another. A student who physically injures another member of the University community or some person on campus, whether the injury is by design or incidental to conduct otherwise in violation of University rules, regulations or custom, may be punished by application of any of the sanctions provided in Section 223.4, the penalty to be proportionate to the degree of wrongful intent or reckless disregard of the interests of others.

224.6 When Punishment for an Offense Is Not Specified. Unless limited by a specific provision of this Resolution, or its amendments, a court or hearing body may impose the maximum punishment within its authority upon any offense over which it has jurisdiction.

224.7 Mitigation of an Offense. The court or hearing body will consider attempts by the defendant to mitigate the injury to others, including compensation of those injured by his conduct, in determining the appropriate penalty.

224.8 Chronic Misbehavior, Recalcitrance, Immaturity, Irresponsibility. The court may find that a student is so frequently in trouble, though the individual offenses are trivial, that the pattern of conduct represents a serious disciplinary problem. Similarly, in his response to the disciplinary proceeding a student may reveal an attitude so hostile to the University community or to any reasonable regulation that the student represents a serious disciplinary problem. Similarly, a student may conduct himself in a way that reveals such immaturity of personality or irresponsibility of character that he is or promises to become a serious disciplinary problem. In such a case the court must be careful that it does not let its anticipation of misconduct lead it to impose an inappropriately heavy or a harsh penalty. The court must be careful, too, that it does not permit a hostile or irresponsible attitude to influence its finding of factual guilt or innocence.

225. Jurisdiction as to Punishments and Other Sanctions. Unless otherwise specified in the charter of a court or hearing body or in this Resolution, courts and hearing bodies shall be limited to the following sanctions:

225.1 Special Courts. Special Courts may impose the following sanctions and such lesser particularized punishment or orders as they may see fit: Section 223.4(1), (2), (3), (4) and (5); Section 223.5(1) through (8).

225.2 The Student Court. The Student Court may impose the following sanctions and such lesser particularized punishment or orders as it may see fit: Section 223.4(1) through (5), and (6) for a definite period of time not to exceed one year; Section 223.5(1) through (8).

225.3 Special Student-Faculty Hearing Committees. The Special Student-Faculty Hearing Committees may impose the following sanctions and such lesser particularized punishment or orders as they may see fit: Section 223.4(1) through (7); Section 223.5(1) through (8).

225.4 Student-Faculty Committee on Appeals. The Student-Faculty Committee on Appeals may impose the following sanctions and such lesser particularized punishment or orders as it may see fit: Section 223.4(1) through (7); Section 223.5(1) through (8).

225.5 Student-Faculty Committee on Academic Discipline. The Student-Faculty Committee on Academic Discipline may impose any punishment or requirement that might be imposed by the college or school delegating the case to it.

225.6 Office of the Vice President for Student Affairs. The Vice President for Student Affairs and hearing officers appointed by him may impose the following sanctions and such lesser particularized punishment or orders as he may see fit: Section 223.4(1) through (7); Section 223.5(1) through (8). Inherent in this office are informal sanctions and powers of non-judicial punishment, non-punitive administrative action and administrative authority derived from the President or from the Board of Control. This section does not limit such powers but applies to actions taken through the formal disciplinary processes contemplated by this Resolution.

225.7 Presidential Appeals Board. The Presidential Appeals Board may impose the following sanctions and such lesser particularized punishment or orders as it may see fit: Section 223.4(1) through (7); Section 223.5(1) through (8).

225.8 The Board of Trustees. The Board of Trustees may exercise any disciplinary power within the authority vested by the charter of the University and not specifically waived by contract, regulation or University policy.

Chapter 3. Functions, Duties, Responsibilities.

301. Committee on the Judicial System - Duties. The Committee on the Judicial System will work closely with the Executive Secretary to the Judicial System to make sure that the various hearing bodies are efficiently, fairly and expeditiously handling their business. The Committee will prepare and publish a set of appropriate general procedures and will assist the individual courts in the preparation of such special rules as they require. The Committee will prepare and submit to the Executive Committee of the Faculty Senate, to the President of the University, or to other appropriate bodies such reforms and amendments as are required by the system. The Committee will assist in the selection of personnel to staff the various courts. The Committee will work with the University Representative and with defense counsel to adapt procedures when special conditions so require. The Committee will report annually to the Faculty Senate on the work accomplished during the previous year by the system, on the strengths and weaknesses of the system, on needed reforms and on changes in the substantive rules and regulations governing students, faculty-student relations, organizational activities or problems among the students and any other non-judicial matters impinging significantly upon the judicial system.

302. Executive Secretary to the Judicial System - Duties. The Executive Secretary will provide and oversee the necessary clerical support for the judicial system. He will maintain dockets for the courts, assist defense counsel and defendants in the preparation of papers required by providing them with information on judicial procedures, serve and publish notices required, arrange for recording or transcription of hearings, publish announcements of meetings and trials, inform parties seeking to file complaints of procedures, counsel defendants of their options and rights, and work closely with the Committee on the Judicial System.

303. University Representative to the Judicial System - Duties. The University Representative will investigate all complaints filed with the Executive Secretary. In his discretion he will file formal complaints in the proper court or hearing body. He will have the power to issue informal warnings and reprimands to students, to seek non-punitive administrative actions or non-judicial punishment, and to seek judicial sanctions in the courts or hearing bodies. He will have authority to investigate complaints, to promise immunity against prosecution, to settle cases on behalf of the University, and such other authority and powers as reasonably inhere in his office or may be granted by the Committee on the Judicial System, the Faculty Senate or the Board of Trustees. The University Representative will prepare or oversee the preparation of all cases in the judicial system brought on behalf of the University. He will personally present all cases to the Student Court, to the Student-Faculty Committee on Appeals, to the Presidential Appeals Board, and to the Board of Trustees. He will coordinate the presentation of all cases to the Special Student-Faculty Hearing

Committees. He will prepare a draft opinion, order or report on behalf of the University for all cases he presents before the Student Court, as provided in Section 223.2. The University Representative will work closely with the President, the Faculty Senate, the various administrative officers of the University, appropriate committees, student organizations, and individual students and faculty as necessary to develop a fair and effective code of rules and regulations for campus life, a fair and effective judicial system, and an environment conducive to academic freedom.

304. Adviser for Defendants, Organizations and Intervenors - Duties. The adviser counsel for parties appearing before the courts and hearing bodies will familiarize himself with the provisions of this Resolution, with general procedural requirements and rules as issued by the Committee on the Judicial System, and with the local rules and procedures of the court or hearing body before he is appearing. He will present his case in an orderly and civil manner. He will be respectful of the court, of other counsel, of witnesses and of parties. He will obey the lawful instructions and orders of the court and will register his exceptions, disagreements, and objections in a manner that will facilitate the conduct of the proceedings. He will familiarize himself with the Statement on Student Rights adopted by the Board of Trustees. In cases before the Student Court or other bodies requiring draft opinions from the University Representative, defense adviser or the counsel to other parties may, at their option, submit draft opinions. Any court, at its option, may require the adviser to submit drafts of orders, rulings, opinions, etc.

305. Demeanor of Members, Counsel, Witnesses and Parties. A system of student courts and hearing bodies and of student-faculty hearing bodies can be effective only to the extent that the cooperation of all participants assures an orderly and fair development of testimony and arguments. All persons before the courts or hearing bodies and the members of such bodies themselves are expected to show respect and consideration to one another so that the fact-finding and legal analyses may proceed in a reasoned and reliable way. The courts and hearing bodies have the power to warn disorderly or disruptive persons, to order them from the room, to close the hearing to the public, to reprimand or censure persons before the court and to adjourn the hearing until some later time or other place. The courts and hearing bodies have the affirmative duty to exercise such powers to protect the persons before them from embarrassment, harassment, abuse, or ad hominem attacks from counsel, parties, witnesses or other persons. Disorderly, abusive or disruptive conduct, or other acts of contempt, may result in disciplinary action against the offenders by the court or hearing body having appellate jurisdiction over the body in question. Such disciplinary procedures are necessary to protect the utility of student courts and hearing bodies and of administrative procedures generally as fair and reliable fact-finding processes. Any member of the court or hearing body, counsel, party, witness or intervenor may ask the court to protect them against abuse or harassment and to assure them an orderly forum for the trial of

issues of fact and law. The primary responsibility for this protection lies with the presiding officer, but all members of the court have a duty to assert the power of the court to assure an orderly, fair proceeding. Failure of the court members, or of the members of any hearing body, to control the proceeding and to assure a fair trial will be grounds for removal. A complaint to the appellate body against specific persons or as an attack upon the validity of any action taken as a result of an improper, unreliable proceeding may be made by any party to the action injured by such action. If the court or hearing body cannot control a proceeding, it shall terminate the session by adjourning, shall confer among its members as to the possibilities of resuming at some later time with cooperation of counsel and parties, and, if such resumption seems futile, shall surrender jurisdiction to the body immediately above it in the appellate structure. Parties may ask the appellate body to relieve the court or hearing body and to try the case itself, as provided in Section 219.

306. Presiding Officers of Courts, Committees, Boards and Other Hearing Bodies - Duties. It is the duty of each presiding officer to manage the mechanics of the trial or hearing; to coordinate schedules, paper work and reports with the Executive Secretary to the Judicial System; to speak for the body in all exchanges with counsel, parties or others except when the body is engaged in general interrogation or conference with counsel or others; to control the proceedings, maintain order, protect persons before the court, and instruct persons before the body on the appropriate procedures of the body; to declare the rulings and orders of the court; to assure the proper completion and filing of all papers; and other duties as defined by the Committee on the Judicial System or as inhere in his position as presiding officer. It is the special duty of the presiding officer to make sure that the developing testimony and evidence and the legal arguments of counsel are relevant and that the matters raised by the complaint, appeal, petition or other business before the body are fully and reasonably developed. The presiding officer has affirmative duties to develop the full case latent in the business before the judicial body. He may not sit passively and let the adversarial scheme lead the body to one side or the other through deficiencies of counsel when inquiries from the body itself will better determine the merit and truth, if any, of the matter.

306.1 Questioning by the Law Advisor. Where the Law Advisor feels that the presiding officer and members of the court have failed to reasonably or fully develop the case latent in the business before the court, the Law Advisor will ask such questions as he feels necessary or helpful to the court.

307. Members of Courts, Committees, Boards and Other Hearing Bodies - Duties. It is the duty of each member of every judicial body to diligently attempt to develop the fullest and fairest case possible for every party or interest before the body. The members should not rely excessively upon the adviser but should actively attempt to satisfy their curiosity

and interest so that they may decide all issues impartially, fairly and reliably. Members must frequently remind parties and adviser that the body is administrative in character and not a judicial body like a civil or criminal court. Confidence is placed in the character and judgment of the members and they should not lightly exclude any evidence or argument but should hear and examine as much as possible of relevance to the specific issues before the body. Members must not let themselves be intimidated by legal objections or rhetoric. Members should feel free to demand that counsel explain arguments, especially those couched in legal terminology, and should not hesitate to ask that they be explained again and again until counsel's meaning is clear. The members are the decision-makers responsible for the outcome. Advisers serve both their clients and the hearing bodies and must not be allowed to overwhelm or intimidate the decision-makers. Members should be especially wary of highly abstract and political arguments, and of arguments based upon provisions of the U. S. Constitution that are not appropriate when applied to non-governmental actions. Members are reminded that the decisions on each question are theirs individually. Members should feel free to disagree or dissent and to append concurring or dissenting opinions. Members have a duty to submit to the Committee on the Judicial System complaints, comments and suggestions for the improvement of the procedures or substantive regulations governing the University. Members are expected to commit themselves diligently and in good faith to the business of the court; to conduct themselves in a manner that will set an example for adviser, parties, spectators and others; to assert the power of the court to protect any person before the court who is subjected to embarrassment, harassment, abuse or other discourtesies; and to disqualify themselves if necessary under the provisions of Section 113.

308. Charge to the Court. It is the duty of the presiding officer to read the following charge, or a substitute as provided by the Committee on the Judicial System:

Charge to the (insert here the name of the body) and All Persons Appearing Before It.

1. Student disciplinary authority of the George Washington University is vested in the Board of Trustees and prior to such time as the Board of Trustees acts, in the faculty of the University by the charter of the University as enacted by the Congress of the United States.

2. By delegation from the faculty of the University, the (insert here the name of the body) is empowered to try cases of the following kinds:
   (insert here jurisdictional statement as provided in the body's charter)

3. This hearing body is an informal adjudicative body following procedures of administrative law as adapted to its needs. The law of evidence does not apply here. Technical objections are discouraged. Within the limits set by the Statement of Students Rights and Responsibilities, this body may inquire broadly and informally into all relevant matters. It is the special duty of the presiding officer to make sure that the developing testimony and evidence and the legal arguments of counsel are relevant and that the matters raised by the complaint, appeal, petition or other business before the body are fully and reasonably developed.

4. The cooperation of advisers and parties is sought to facilitate the proceeding. Advisers are advised that the members of this body may often interrupt testimony and arguments to make specific inquiries or to ask for repetition or clarification. The members will try not to disrupt the testimony or train of thought of counsel or witnesses, but the questions of members should be answered explicitly and immediately.

5. Advisers and parties are reminded that the obligations between individual students and the University are largely contractual in nature. The University is not an agency of the federal government and arguments directed toward Constitutional limitations upon governmental action are of very limited relevance here.

6. Objections and exceptions taken by advisers or parties to rulings of this body should be noted explicitly so that the presiding officer may record the specific objection made or exception taken.

7. Advisers and parties are reminded that the development of a full, fair and reliable record requires that witnesses, opposing counsel and parties, and all other persons before this court be treated with fairness, courtesy and respect. This body will not permit witnesses or anyone else to be abused. It will not permit unproductive speech-making or irrelevant arguments or testimony. All parties and their counsel are therefore reminded to keep the specific nature of the business before this court in mind and to address their testimony and arguments to the issues at hand.

(The presiding officer then proceeds to introduce parties and counsel to the hearing body and to announce the names of the members of the hearing body.)

309. Functions of Appellate Bodies. Those bodies responsible for reviewing the proceedings of lower courts or bodies have four functions. First, it is the responsibility of the reviewing body to make certain that justice was done and that the action of the lower body was fair, reasonable and in accord with University policies. Second, it is the responsibility of the reviewing body to correct errors or misunderstandings

of the lower body, with remands accompanied by specific instructions as to procedures or deficiencies as provided in Section 220.1, in a practical, efficient way. Third, it is the responsibility of the reviewing body to educate the lower body and all members of the judicial system as to the requirements, limitations, and responsibilities of the system. This is normally accomplished through conferences with counsel on appeal, the opinion of the appellate body, specific instructions or comments upon remand, and direct communications with the presiding officers and members of the various bodies when specific comment or instructions will be helpful in improving the fairness and effectiveness of the judicial system. Fourth, it is the responsibility of the reviewing body to facilitate the development of sound and reasoned applications of University rules, regulations and common law through its constructions and interpretations. These will normally be embodied in the opinions of the appellate body. Lower courts and hearing bodies will be bound by the interpretations and constructions of rules, regulations, customary practice and contractual obligations of the University made by their appellate bodies. The appellate body will determine in cases appealed at its discretion whether substantial justice or the effectiveness of the judicial system requires review.

310. Judicial Administration. In addition to reports, orders and recommendations as to specific cases, the individual courts and hearing bodies will file such reports on case load, meetings, docket backlog, etc., as may be required by the Committee on the Judicial System. Such reports are to be filed with the Executive Secretary of the Judicial System.

311. Use of Draft Opinions. The Student Court, and any other court or hearing body using draft orders, rulings, reports, opinions, etc., must exercise special care not to be unduly influenced or misled by oversight into a misstatement of its position by the draft opinions and other models. The requirement of draft opinions and other papers is provided to expedite the work of the hearing bodies and to facilitate the analysis of issues before the body.

312. Specification of Penalties Sought. The University Representative will indicate to the court or hearing body at the outset of each trial what penalty or order is sought. At the conclusion of the trial, the University Representative may modify the penalty or order sought. At any point in the trial process, the parties before the court may negotiate a settlement of the case and stipulate a penalty or order, which stipulation will be binding upon the court unless in the judgment of the court such penalty or order would result in substantial injustice to the parties before the court or to other interested parties. In determining the appropriate penalty or order, the court is not bound to choose between that requested by the University Representative and that requested by the defendant, but may vary and shape an appropriate penalty or order in its discretion.

Chapter 4. Regulations, Codes and Ordinances

401. University-wide Regulations, Codes and Ordinances. Conduct regulations of University-wide application will be prepared with student participation in accordance with the Statement on Student Rights and published in a manner reasonably calculated to inform students of the limitations on their conduct. The obligation to make University-wide regulations explicit does not relieve students of conduct reasonably implicit in the organization, regulations, functions or custom of the University or of institutions similarly organized and regulated.

402. Regulations Governing Special Programs, Facilities and Persons. The University may adopt such regulations as it chooses and by procedures of its choosing to govern special programs, facilities or persons of special status within the University. Such regulations shall be published in a manner reasonably calculated to inform those persons affected, but students enjoying a special relationship to the University or utilizing specialized facilities, such as the University Center, the library, and the gymnasium, must make a positive effort to inform themselves of such regulations.

403. General Authority of Officers and Agents. The promulgation of regulations governing student conduct does not bar or limit the reasonable promulgation of rules, instructions or commands inherent in the general authority of University officers, agents and employees. Such power may be exercised in the event of an emergency or under special circumstances reasonably requiring its exercise, including temporary actions pending review and reconsideration of standing rules and regulations, to impose limitations upon conduct or duties upon those using facilities, participating in programs or entering upon University property. Persons exercising such authority will provide such notice as is practicable to persons affected, including, when practicable, notice of the authority by which such action is taken and reasonably explicit notice of the conduct limited, barred or required. This inherent authority includes the power to order persons off property, out of facilities or to discontinue specific conduct. The remedy for students and others who feel that such authority is improperly exercised is to complain immediately to the Vice President for Student Affairs, who shall make a timely and reasonable investigation and take such action as is reasonably required. Students shall presume proper authority in officers, agents and employees and shall violate their orders and instructions at risk of disciplinary action.

404. Publication and Notice. The purpose of publication and notice requirements is to reasonably inform all persons subject to regulations of their substance. Regulations are not promulgated by the standards of criminal statutes and students may not engage in all conduct not explicitly and precisely forbidden. The purpose of publication and notice is to give reasonable notice of an area of conduct regulation and courts, hearing bodies and administrators will not excuse conduct reasonably prohibited by the regulation, rule or order on merely technical or unreasonably strict construction.

Chapter 5. Special Procedures and Emergencies.

501. Special Procedures. To facilitate the prompt adjudication of disciplinary cases in situations involving large numbers of students and whenever a significant backlog of untried cases develops for either the Student Court or the Student-Faculty Committee on Appeals, special hearing committees as necessary will be appointed by the President in accordance with the provisions of sections 204, and 204.1. These committees, to be known as Special Student-Faculty Hearing Committees, will consist of three students and three faculty members, the chairman to be one of the faculty members. The procedural protections of the Statement on Student Rights and Responsibilities will govern. Appellate procedures are as specified in Sections 216 through 221.5.

502. Emergencies and Extraordinary Situations. The University recognizes the impossibility of anticipating every circumstance under which the disciplinary authority of the University must be exercised. The University also recognizes the possibility that compelling circumstances may require that certain procedures normally afforded students be suspended. After consulting as practicable with the Chairman of the Committee on the Judicial System, the Chairman of the Executive Committee of the Faculty Senate and the President of the Student Body (or, in his absence, the senior available student of the Joint Student-Faculty Committee on Student Affairs), the President may in his individual discretion suspend this resolution or parts of this resolution for a period not to exceed thirty calendar days. If the President exercises this power, he will do so in a letter to the Chairman of the Board of Trustees indicating in what particulars this resolution will not be followed, and such letter will be published to all members of the faculty and prominently displayed on the campus. The exercise of this power will automatically convene the Faculty Senate, which meeting will be set by the Executive Committee, but in no case for a date later than ten calendar days after the effective date of the suspension. The Faculty Senate may consider at that meeting any matters relative to the suspension of normal procedures, but it will consider explicitly the following questions:

(1) Does the Faculty Senate advise the President to vary the terms of the suspension in any way?
(2) Does the Faculty Senate propose any modifications of the procedures provided under the terms of suspension?
(3) Does the Faculty Senate propose any modifications to the permanent disciplinary procedures of the University?

Chapter 6. Reform, Changes, Amendments.

601. Responsibility for Reform and Amendments. It is a general duty of all persons associated with the student disciplinary system to advise the Committee on the Judiciary of modifications that should be considered to improve the fairness and effectiveness of the system.

601.1 Committee on the Judicial System - System Amendments. The Committee on the Judicial System will bear the responsibility for identifying, studying and proposing amendments to the judicial system. It will present such amendments in the form of draft resolutions to the Executive Committee of the Faculty Senate and to the President of the University. The Committee will specifically list in its annual report proposed modifications under study and modification proposals made to be not acted upon by the Faculty Senate. See Section 301.

601.2 Faculty Senate Consultation with the Committee on the Judicial System and the Joint Student-Faculty Committee on Student Affairs. Prior to amendments to this Resolution, the Faculty Senate shall consult with the Committee on the Judicial System and the Joint Student-Faculty Committee on Student Affairs, its successor or equivalent.

THE GEORGE WASHINGTON UNIVERSITY
Washington, D. C.

The Faculty Senate

December 1, 1970

The Faculty Senate will meet on Friday, December 11, 1970, at 2:10 p.m., in the Faculty Conference Room on the sixth floor of the Library.

Agenda

1) Call to order

2) Minutes of the Regular Meeting of November 13, 1970

3) Statement by President Elliott on the financial problems of the University

4) A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH DISCIPLINARY OFFENSES (70/5), Alternative A attached

   A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5), Alternatives B and C attached

5) A RESOLUTION CONCERNING COMMITTEES OF THE FACULTY SENATE (70/6) (excerpted from report by the Subcommittee for Review of Senate Committees dated 10/23/70 and attached)

6) Brief Statements

7) Adjournment

Frederick R. Houser
Secretary

ALTERNATIVE A

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH DISCIPLINARY OFFENSES (70/5)

Whereas, the Student Court is scheduled to expire at the end of the Fall Semester, 1970-71; and

Whereas, after careful and protracted study the Ad Hoc Committee on the Judicial System has recommended major changes in the student disciplinary system currently utilized by the University; and

Whereas, those changes include the establishment of a carefully designed judicial system; and

Whereas, the Faculty Senate believes that the recommendations of the Ad Hoc Committee on the Judicial System appear likely to produce a workable system consistent with the Statement of Student Rights and Responsibilities and with the Faculty's responsibility for student discipline; therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT:

1. The recommendations of the Ad Hoc Committee on the Judicial System (Committee Report, Part I, "Recommendations") be adopted and put into effect for a period beginning as soon as practically feasible and continuing until May 1, 1972.

2. To facilitate the implementation of the recommendations, the President proceed forthwith to appoint the Committee on the Judicial System in accord with Part I, sec. 207, of the Ad Hoc Committee's Report.

3. The operation of the new judicial system be thoroughly reviewed by the Faculty Senate during the Spring Semester, 1971-72.

4. At the end of the period specified in this Resolution, the judicial system be then continued, modified, or replaced in accordance with recommendations of the Faculty Senate.

Reuben E. Wood
John A. Morgan, Jr.
Arthur D. Kirsch
Members of the Faculty Senate, and
members of the Ad Hoc Committee on the Judicial System

December 1, 1970

ALTERNATIVE B

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES(70/5)

Whereas, the University is a community composed of students, faculty, and administrative personnel, all of whom have a legitimate claim to representation on tribunals concerned with student breaches of the peace, and

Whereas, in the words of the University Charter, "The Faculty...shall have the power of enforcing the rules and regulations adopted by the trustees for the government of the [students]...until a quorum of the trustees can be had," and

Whereas, the spirit of the Charter suggests that this responsibility be accepted rather than largely imposed on or delegated to members of the student body, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. Effective with the end of the Fall Semester 1970-71 the Faculty Senate on behalf of the faculty delegates the initial adjudication of charges that students thereafter have violated rules of the University protecting teaching, research, learning, administration, and University persons and property from disruption, obstruction, injury, damage, or defacement to a Joint Hearing Committee, hereinafter called "the Committee" to be composed as follows:

a. Two students and two alternates nominated by the head of the student government and appointed by the President of the University. If there is no head of student government, two students appointed by the President of the University.

b. Two faculty members and two alternates appointed by the Faculty Senate from persons holding continuous tenure, at least one of whom is trained in an adjudicatory process. The Committee shall choose one of its members to rule on procedural matters occurring during the course of the hearings and deliberation, provided that such rulings may be overturned by a majority of the Committee.

c. One administrative officer and one alternate appointed by the President of the University.

2. A majority of the Committee shall constitute a quorum. Decision shall be by majority of those present and voting. Alternates may participate in the absence of regular members of the Committee.

3. The decision of the Committee to discipline or not to discipline a student will not operate to insulate the student from proceedings by the University or individuals or governments for injury to persons, damage to property, or violation of criminal law.

4. An accused student shall be given the option of having the charges against him heard either by the Committee or by the Vice President for Student Affairs, and if the accused student fails within a reasonable time before the charges are to be heard to announce his choice under this option, the charges shall be heard by the Vice President for Student Affairs.

5. The Vice President for Student Affairs may elect to assume jurisdiction in lieu of the Committee over cases of minor infraction where the penalty should not, in his judgment, appropriately include suspension or expulsion from the University. Where the Vice President for Student Affairs so elects, such cases shall be heard by him and suspension or expulsion may not be imposed.

6. Both the University and the student may appeal a final decision of the Committee or the Vice President for Student Affairs only by petition to the Board of Trustees for review.

7. The President of the University shall appoint a person trained and experienced in the presentation of evidence to an adjudicatory process to present the evidence on behalf of the University at all hearings, and appear on behalf of the University in any appeals, except that such person will not be required to appear in cases of minor infractions as defined in paragraph 5, supra.

8. Existing institutions and procedures are continued for disposition of charges of student misconduct occurring prior to the effective date of this Resolution.

9. This Resolution will expire on June 30, 1972, unless it is sooner repealed, amended, or extended.

Executive Committee of the Faculty Senate

December 1, 1970

ALTERNATIVE C

A RESOLUTION TO MODIFY THE UNIVERSITY JUDICIAL SYSTEM DEALING WITH STUDENTS CHARGED WITH NON-ACADEMIC DISCIPLINARY OFFENSES (70/5)

Whereas, The Student Court is scheduled to expire at the end of the Fall Semester of 1970-71; and

Whereas, The Student Court and Hearing Committee have had a trial period of approximately eighteen months and have been found unsatisfactory in achieving fair, accurate, expeditious and inexpensive adjudications of non-academic student disciplinary matters; therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY:

1. Existing institutions and procedures are continued for disposition of charges of student misconduct occurring before the end of the Fall Semester 1970-71.

2. The Student Court is abolished as to all disciplinary cases which may arise on the basis of charges of student misconduct occurring after the end of the Fall Semester 1970-71.

3. The charges of non-academic student misconduct shall be heard and determined by the Vice President for Student Affairs. Both the University and the student may appeal a final decision of the Vice President for Student Affairs only by petition to the Board of Trustees for review.

Executive Committee of the Faculty Senate

December 1, 1970

PART II - ESSENTIAL ASPECTS OF A UNIVERSITY JUDICIAL SYSTEM

Student Conduct And The University As Community

The mass protest is an exciting experience. For those moving with it, it may be wildly invigorating or solemnly fulfilling, or both in a matter of minutes. It may give one a new sense of identity, of purpose, of worth. It may transform propositions formerly understood only as cliches into immutable truths, and purge one of all doubt and competing loyalties. The feeling of cohesiveness alone may be a memory for a lifetime. In a world filled with contradictions, half-truths, compromises and competing values, to know what is right, if only briefly, is a stunning delight, and a sobering and dignifying responsibility. Such is the nature of the human animal.

It is not surprising, therefore, that the mass demonstration should have enormous appeal and prove deeply rewarding to students.

Nor is it surprising that the audacious confrontation, the calculated disrespect, the daring act - even of felonious or treasonous proportions - should excite, command attention and personal authority, and give a person, a position or a group new status, new audiences and new bargaining power.

These acts and events have been described in morally neutral terms. When they are charged with righteousness and idealism, feelings are intensified and the impact amplified.

NOTE CONCERNING FOOTNOTES AND THE USE OF LEGAL AUTHORITIES: A number of footnotes have been supplied to facilitate further reading by those interested. Some citations to cases and commentators are not for authority supporting the propositions of the text, but to indicate an especially good or useful discussion of a topic. In using legal authorities, the reader should also bear in mind three important aspects of the state of the law in this area: (1) Constitutional protection against arbitrary state action, including its indirect manifestations in agency conduct and the administration of state gratuities, has been enormously expanded in the last several years. How far this will go and what directions it will take is not predictable. (2) The private university has traditionally enjoyed much more freedom as to its procedures and policies than have public universities. The judicial scrutiny of state universities may merely be enlarging this gap. On the other hand, it seems more likely that the difficulties of transferring to other universities when one is barred from readmission to one's former school, the enormous social and economic consequences of being barred from a college education, and the essential identity in objectives and processes of public and private universities, may increasingly tempt courts to rationalize treating the public and the secular private university alike. Nevertheless, the sectarian private college or university may still be so readily distinguishable in purpose and composition that it may be treated differently. The reader must

And when these acts and events are placed in the university, where tradition has glorified reason, order, dispassion, protection of the individual from group pressure or tyranny, and where physical violence is almost unknown and almost all conflict is intellectual or hypercivilized, then these acts and events not only frighten, they horrify; they appear not merely irrational and heretical; and they clash so fundamentally with the university's conception of itself as to seem to go beyond indifference or disloyalty to premeditated subversion, or to a new barbarism.[1]

It is understandable, therefore, that so much attention has been focused upon protests, demonstrations and violence as the problem of student conduct. It is understandable, but it must not be allowed to obscure the broader needs of the university to deal fairly and efficiently with student behavior of all

1. Recall, for example, the sense of outrage provoked by the photograph of the gun belted students at Cornell, or the famous picture of the grimacing student crouched in the window at Columbia with arm drawn back and a rock in his hand, apparently ready to throw it into the crowd of students and police immediately in front of him. Similarly, the horror provoked by the photograph of the slain student at Kent State University, and of the bullet holes in the dormitory wall at Jackson State College.

read the cases with care, however, because courts may make general statements about university obligations which they intend to apply only to public universities, or conversely only to private universities. The failure of writers to make this distinction every time that it applies may make quotations out of context misleading. This care must be exercised in regard to both courts and commentators. (3) The courts are so familiar with standards of due process and equal protection and are so conscious of the Bill of Rights and other constitutional protections that the burden of imposing such standards upon private parties may not appear significant to many judges. Further, the constitutional interests seem complementary to university ideals of inquiry and debate. And further, the constitutional interests may be thought too important to suffer abridgement through a contracting process in which the university has such disproportionate bargaining power to that of the student applying for admission. Against these attitudes will be pressing those that spring from the broad national revulsion at student violence, or at violence perceived as of student origin. And those attitudes that see the students as minors, perhaps "indulged" minors, who may yet require positive supervision and control. And those attitudes that see the university as an essentially managerial problem in which those with administrative responsibilities must be given broad discretion. And those that find governmental analogies to university governance, with their connotations of due process and democratization, simply misplaced. It should be noted, too, that the interest in determining the boundaries of permissable behavior is not so that the university may venture as close to the line as possible, but because understanding the terms under which the courts are attempting to locate the boundary facilitates the university's perfecting its own disciplinary procedures. The committee would point out that the record of the George Washington University in matters of student discipline and student participation in disciplinary policy making and procedures places this university among the more liberal institutions and that its procedures have been substantially more liberal than those required of state institutions by most courts.

kinds and in many different circumstances. It was this committee's responsibility to look at these broader needs as well, and to attempt to fashion a judicial system that will deal fairly and effectively with the routine as well as the highly dramatic misconduct.

It is understandable, too, that the fears and indignation and anger induced by attacks by students upon their universities may sometimes tempt all of us to treat those accused of political violence summarily. The speed and decisiveness of arbitrary action may be very appealing. But it is the university's determination - as well as its firm tradition - to protect students against unfair or unreasonable actions. This becomes especially important when the university is itself the victim of violence or is made the target of the student defendant's contempt and hatred.

So it was also this committee's responsibility to look at all of the disciplinary processes in terms of fairness, and especially to scrutinize the procedures for handling cases growing out of political action. The committee believes that the procedures it proposes fulfill the standards of fairness and reasonableness required by the law, and those higher standards required by the university's values and integrity.

Another important consideration to the committee was the simple one of practicality. The procedures of the university in being and those proposed to the committee were viewed in terms of efficiency, as well as fairness. The committee believes that those it proposes in this report are capable of speedy, effective and fair administration.

The committee also gave considerable weight to the inclusion of students in the disciplinary processes. Sometimes this was done because the students are more familiar with the problems and objectives of discipline, as in the dormitories, and may be in the best position to judge and sanction misconduct. Sometimes this was done because the students sought responsibilities for judging and sanctioning misconduct, were thought fully capable of doing so and would thereby emphasize the confidence of the university in student self-government. The Student Court and the lower specialized courts are illustrative. Sometimes this was done because it was felt that a student viewpoint might better inform the court or panel and might help the faculty members thereon to better understand the character of specific conduct. The Special Student-Faculty Hearing Committees, the Student-Faculty Committee on Appeals, and the Student-Faculty Committee on Academic Discipline all illustrate this.

Sometimes, however, the committee did not include students on disciplinary panels. It was not done in the case of the Vice President for Student Affairs because this officer as a hearing officer is available to the student defendant as an option, an option the committee anticipates will be exercised to preserve privacy or because of a mistrust of student judges on the part of the student defendant. It was not done in the case of the Presidential Appeals Board because it was felt that the functions of this Board would be primarily reviewing for fairness or justness the work of a lower body including students, or excluding students at the option of the student defendant; that student experience, insight and values would already have been obtained through the trial record, opinions, and appellate briefs; and that the faculty and Board of

Trustees would like to have, at some point in the hierarchy of courts and panels, an exclusively faculty body for appeals and review so that feelings of parents, students and faculty that the faculty was avoiding responsibility for disciplinary actions might be reasonably assuaged. Students were not included in non-punitive administrative actions or in punitive non-judicial actions of a limited kind, as discussed later in this report, because it was felt such inclusion was inconsistent with the timely, efficient and practical performance of the administrator involved. Further, student participation is not universally desirable or a principle to be applied uncritically or indiscriminantly to university functions. The administration is responsible for running the university. It is accountable to the faculty and to the Board of Trustees. The role of the student in administrative matters is not to fulfill some managerial apprenticeship or role playing in applied civics, it is to realize specific potentials for constructive contributions by students as students. Student participation, in the judgment of the committee, is to be used selectively and purposefully, and not to satisfy abstract notions of democratization.

Students were included in the Committee on the Judicial System because the committee felt that the experience, insight and judgment of students, some experienced in the judicial system and one from the campus at large, would be important in the policy making functions of this committee. Similarly, the committee would encourage the use of students in the formulation of conduct regulations and university-wide rules. Student experience will help the university avoid the unfair or unrealistic regulation and will help identify areas requiring regulation that may have low visibility to the faculty.

The committee found that the variety of student conduct problems sprang from the breadth of activities and enterprises associated with the university. The university as landlord, for example, faces the usual demands and problems of tenants, plus carrying a burden as coordinator and promoter of student activities incidental to the close living of so large a group of young adults. The university as entertainer and restauranteur faces expectations the occasional user or the less dependent consumer would solve for himself, and the effective operation of these services may require regulations that would not be needed in the less indulgent, less familiar relationship of the marketplace. Similarly, the university as entrepreneur of concerts, parking lots, a bookstore, a barbershop, etc. faces the same problems of rising theft and vandalism faced by commercial promoters and entrepreneurs. On the other hand there are many conduct problems related specifically to academic activities and programs. For example, library services are a scarce resource and must be carefully regulated. Conduct in laboratories can be costly and dangerous to others if the negligent or malicious or uninformed student is not supervised and controlled. Classroom lectures and discussion groups are so familiar as to make the appropriate limits of conduct appear obvious to most, and yet to the excited, indignant student group they may represent an opportunity for confronting error, the teacher, the apathetic or copped out student, the "university" or, incredibly, the President of the United States, the military-industrial complex, or "the establishment." University property, in such eyes, is no longer the property of others or of the university, but a kind of hostage to force recognition or negotiation, or a surrogate villain upon whom anger and frustration can be discharged, or a highly visible medium for the publication of indignation

and protest. This range from the trivial to the political reflects the variety of ways in which the university is directly engaged by student misconduct.

The university may also be involved indirectly in student misconduct. Three classes of cases will illustrate. The university may find itself the arbiter to conflicts between students, as when a student injures another or steals from another. The university may find itself the arbiter of conflicts between students and their organizations or between student organizations, as when the student board of the University Center denies space to a student organization attempts to expel a member. Finally, the university, in spite of its very limited control over students, is thought to be responsible for the conduct of its students off-campus. The university disavows this responsibility and has only very limited liability at law in this respect. Nevertheless, as a matter of public relations, as a moral matter, and as a political matter, the university cannot escape general responsibility for the conduct of its students off-campus, especially when they act in concert. The following quotation illustrates this feeling in the public at large:

> If I sue a manufacturer of cheese because he pollutes a stream and drives the neighboring tenant away from his home because of the smell and the noxious odor, the manufacturer may say, "Well, I'm a cheese maker, and I don't know how to deal with stream pollution and all those things;" but society is now saying, "Mister, if you're going to manufacture cheese, you have got to take care of the by-product." And I am telling you that if the University brings 33,000 students to the city of Madison, there is some responsibility on that university for the glass the students break uptown, for the people they get involved with.[2]

Concern for these matters led the committee into several extended discussions as to whether or not the university has an interest in off-campus conduct sufficient to justify regulation. The committee could reach no agreement, but the views expressed in the citations of footnote 2. illustrate the difficulties and policy considerations the committee weighed.

The last problem noted points up another aspect of the committee's deliberations. From the outset of the committee the chairman indicated that the committee's business was primarily procedural, not substantive. The committee felt that its own problems were already nearly unmanageably numerous; that it was not constituted with the review of substantive regulations in mind and might not, therefore, reflect the composition of campus interests appropriate

2. Cates, "A Trial Lawyer's View of Student Disruption", in Holmes, Student Protest and the Law, Institute of Continuing Legal Education, Ann Arbor (1969), p. 39. There may, of course, be a direct or indirect university interest in off-campus conduct. See U.S. District Court order cited in note 4 at p. 145. But compare Wright, note 5 infra at 1067-1069. See also "Participation of Student in Demonstration on or near Campus as Warranting Expulsion or Suspension from School or College", 32 ALR 3d 864 (1970).

to such an inquiry; that the substantive review of regulations would disrupt and distract the committee from the procedural issues; and that such matters fell properly within the jurisdiction of an already constituted student-faculty committee. Nevertheless, the committee did from time to time consider superficially substantive questions. The off-campus bar is one illustration. Another example, the committee felt that the present regulations barring disruption of academic processes should be enlarged to include administrative activities since the distinctions between the two often were artificial and since the university's interest in free speech and full debate hardly seemed to require the protection or implicit protection of unreasonable disruptions to administrative processes.[3] The committee recommends to the President that a comprehensive review of rules and regulations governing student misconduct be undertaken, with special consideration of the needs for flexibility, adaptability, notice to students, reasonableness and relevance to university objectives, and adequate publication.

The committee attempted to recognize the impossibility of explicit proscription of every kind of offensive conduct and the necessity for the university to rely upon both general prohibitions or standards and upon custom and convention for defining acceptable standards of conduct. The committee dealt with this within its jurisdiction in terms of: (1) the fundamental fairness of imposing sanctions for conduct not explicitly forbidden in writing by some university regulation;[4] (2) the standards of construction to be applied to university regulations;[5] (3) reliance upon a common law of the university to regulate conduct;[6] (4) the contractual relationship between the entering student and the university;[7] (5) the duty of notice of special standards of conduct in

3. One of the hazards of legislative drafting is the possibility that an illustrative listing of conduct prohibited may be read later by a stranger as an inclusive list, permissive of conduct not explicitly included. This can be avoided by making clear that the examples are illustrative and/or by general prohibitions of like conduct at the end. The risk of the latter, of course, is that it will be fatally vague.

4. Commission on Campus Government and Student Dissent of the American Bar Association Report, pp. 20-22 (1970); General Order on Judicial Standards in Review of Student Discipline in Tax Supported Institutions, 45 F.R.D. 133, 145 (1968); also see citations of note 5.

5. For a description of such considerations, see Soglin v. Kauffman, 295 F. Supp. 978, 991 (1968). For a discussion of standards of specificity, see Wright, "The Constitution on the Campus", 22 Vand. L. Rev. 1027, 1061-1067 (1969).

6. For an analogous problem, see Cates, supra note 3 at p. 36, but note that a state university was involved in that case.

7. "Developments in the Law: Academic Freedom", 81 Harv. L. Rev. 1045, 1145 (1968).

an institution;[8] and (6) the inapplicability of state action concepts imposing constitutional requirements or many situations of discipline in private universities.[9] The gist of the committee's conclusions is given later, but note should be taken here that the committee dealt with types and forms of regulations and conduct standards, not their content.

The committee attempted to propose an integrated system of courts, hearing panels, hearing officers, reviewing authority and university representation. To avoid different courts interpreting regulations inconsistently, which would result in different justice for different defendants, the committee attempted to place the interpretation of regulations in single chain of appeals. Thus, the committee divided appeals from the Vice President for Student Affairs, making it possible for those concerned with procedure or interpretation of regulations to go to the Student-Faculty Committee on Appeals and for those concerned with findings of fact or private matters to go to the Presidential Appeals Committee.

Finally, observers viewing the labored and complicated product of the year and a half of committee work must wonder whether there isn't a simpler and more direct system possible. As will appear later in the report, the committee considered a wide variety of alternatives. It recognized that numerous plans are workable. The classic Dean of Men who investigates, hears the student's side of the case, makes a reasoned decision and imposes a sanction is perfectly workable. Provided he is sufficiently open-minded, impartial and disinterested, provided he gives adequate notice of evidence against the student and a reasonable opportunity to rebut, and provided the university regulations are themselves constitutional and sufficiently clear as to forbidden conduct so as to have put the student on notice, this procedure would be upheld by the vast majority of state and federal courts, probably all, even as to state or federal institutions. Why, then, go into the judicial business? Why three or four possible reviews of a decision? Why a formal university advocate? Why reporters, tapes, records, opinions, remands with instructions, and interim appeals? Why the enormous costs? The short answer is that the committee feels that these protections, that this extensive student participation, and that these mechanisms have real advantages of providing the university with student insight and enlarging student confidence in the institution. The committee feels that these advantages justify the proposals, and that the probable costs are not disproportionate.

What Constitutes a Fair System of Discipline?

In several places in this report the committee has indicated what are often felt to be the critical elements of fairness. It has been noted that constitutional due process is not required and that the standards of criminal proceedings do not apply. It has been pointed out that the restrictions upon arbitrary state action or conduct that limit state universities are not all applicable to the management of private universities. It has been suggested repeatedly that even the broader standards of civil litigation are excessively legalistic and that something far less judicial and formal is sufficient. But what is sufficient? What are the essentials?

The committee would like to summarize the most critical features of any system of student discipline provided by a private university:

8. A.B.A. Commission, supra note 4 at p. 21.

9. Grossner v. Trustees of Columbia University in the City of New York, 287 F. Supp. 535, 546-549 (1968).

a. Conduct regulations must be rationally related to the university purposes. Thus, a student enrolling in a sectarian university of clearly declared principles may be much more circumscribed than a student enrolling in a secular, urban, large private university. The scope of the restrictions permitted is a function of the bargain struck between the university and its enrollees, and only restrictions implicit in that contract of enrollment may be a basis of discipline and punishment. What a court will find in such a contract, of course, is quite broad.

b. Conduct regulations must be reasonably published. A student's contractual interests cannot be invaded arbitrarily. When a student is disciplined, the action must be grounded in regulations which the student knows or should reasonably know, although the forbidden conduct may be prohibited by convention and custom as well as by explicit regulation.

c. The student must be given a fair hearing. Although the rights of confrontation and cross-examination are not automatically applied to a private university, the student must be given an opportunity to know the evidence against him upon which the disciplinary action will be based, and an opportunity to respond to that in a reasonable way. This requirement of a fair hearing thus requires notice of the charges and evidence, time in which to prepare his case, and an opportunity to present his case to an officer or panel with an open mind.

d. The university must follow its own rules. Although a private university may not be required to afford specific protections, once it promises to do so then it cannot arbitrarily withdraw such protections. These protections become part of the contract struck with the student. Exceptional circumstances and impossibility of performance may vary the burden on the university, but it will normally be expected to conform to its own procedures. Technical defects in procedure that do not prejudice a student's rights are not critical, but every attempt should be made to conform to the procedures established.

e. Some means of review should be provided. Although a private university may act finally at the original administrative level, an opportunity to have the findings and punishment reviewed by another officer is so familiar a part of our tradition of avoiding governmental arbitrariness that the committee would suggest that this opportunity should be a part of even the most minimal system of student discipline.

Experience and Efficiency.

The committee found that some faculty mistrust of the student court came from severe standards of performance, standards so severe as to be inappropriate in application even to our criminal courts. The faculty reaction has often been a three-step one. First, there is a disruption of academic activities. Second, there is an expectation that disciplinary action will be taken against someone. Third, when there are no disciplinary actions or when those taken against specific students are unsuccessful, there is a feelins of frustration, betrayal and indignation.

The committee would emphasize that the student court and the student judicial system are still finding their way. But the committee would emphasize that even when the system is operating at its best the kind of frustration described above will sometimes result. Why? There are several reasons:

1. The adoption of procedural protections imposes an obligation to afford them. A determination to do fairness means that the university assumes the burden of offering the decision makers reasonable evidence that there was a breach of regulations and that the defendant committed the breach. The numerous reversals of criminal cases for procedural defects in spite of the conscientious prosecution by experienced professionals should be an indication of the difficulties in conforming in every instance to abstract standards. The relaxed standards of the informal university process should be more easily met, but even here the university will probably occasionally compromise its own case.

2. Frustrations with the present system have partly resulted from inadequate preparation and presentation of the university's case. It is not a procedural nicety to prove that the defendant himself actually violated a regulation, such a requirement is essential to the most elementary fairness. Further, if those who bring the university's cases feel an undue pressure on the part of the administration to act, they may bring inadequate or insufficient cases to trial. Prosecuting attorneys under severe social pressure to solve a case and bring a defendant to trial will often present an unsatisfactory case. When they do not feel such pressure and may pick and choose the cases to be prosecuted, they enjoy very high rates of convictions.

3. The committee has attempted to provide overlap of personnel and as much continuity of experience as a student participating system can practically afford. Nevertheles, new personnel must acquaint themselves with the procedures and with the standards of proof. It is a commonplace among defense counsel that you attempt to avoid a jury at the end of their month's service and try to bring your case before a new jury. A fresh jury will be less sophisticated, less critical and more emotionally sympathetic to the defendant. The result is that as jury's develop experience they become more severe. The same will probably be true of the student court. This has been the experience at other schools with student disciplinary systems.

4. An important aspect of a fair judicial system is that it provide some room for fashioning a sentence or sanction appropriate to the defendant's guilt or culpability.[10] The defendant and his personal circumstances will be far more immediately before the court than before the campus generally. It is quite probable that some will think the sanctions imposed too light and this is likely to be a chronic aspect of any system short of automatic expulsions.

10. Use of an excessive or disproportionate sanction may provoke litigation and an unsympathetic judicial review of the entire process. See "Maintaining Campus Order and Integrity", a study by the American Association of State Colleges and Universities (1970), AASCU Studies 1970/4, page 9.

5. It is also worth noting that the penalties of suspension and expulsion are serious not only in terms of their stigma but in terms of financial impairment of the student's earnings potential. A student whose graduation is delayed a year may well lose a year of provessional income at the end of his career, mitigated by his limited earnings as a non-graduate during his year of suspension. If for some reason the action means he does not graduate at all, the difference in lifetime income may be substantial.[11].

While these considerations are important in the case of the individual student whose involvement seems limited, without the calculation and malice that may threaten the security of other students, faculty and the institution, the committee emphasizes the importance of the firm and quick response to more serious risks to the institution.

Thus, to avoid the feeling of helplessness and despair that may come with a belief that the disciplinary system is utterly without useful effect, the committee would hope that the Hatchet and other campus media of communication would focus in each case upon the seriousness of the conduct, rather than upon merely the question of disruption or innocence of disruption. The action finally taken may be more fairly evaluated by everyone interested in an effective disciplinary system.

Credibility and Efficiency

The committee found that a variety of disciplinary systems were in use at various schools or had been proposed by various study groups. It found no clear superiority in any of these systems. All depend for their effectiveness upon fair, reasonable and responsible persons of sound judgment

11. The Census Bureau reports that the lifetime income of those with 4 years or more of college, as of 1968, was $579,653, but of those with 1 to 3 years of college it was $422, 156. Those with further training or professional degrees are not differentiated in these statistics and the lifetime income costs of denying a student a fourth year of college is not this difference. Nevertheless, to deny a student a year of income late in his professional life may constitute a real cost of many thousands of dollars. The seriousness of this may be compared with the costs to the university and his classmates of a brief disturbance grounded in bad judgment, immaturity or irresponsibility, a real economic injury of perhaps one or two hundred dollars. The more serious the disruption, of course, the more serious the sanction should be. The committee noted that the wave of legislation in 1968-1969 state legislatures that sprang from indignation at student disruptions frequently imposed fines of up to $500. and jail terms of up to six months. Many legislatures in which bills were proposed took no action. A brief summary of the census data may be found at p. 2, The Chronicle of Higher Education, November 23, 1971. A survey of legislation on campus disorders, state-by-state, was reported in an unpublished student paper available to the committee, Stuckey, "The Student and the Law", June, 1969.

and values. None is effectively self-executing or self-enforcing. All are feasible only to the extent that they are found acceptable to the critical interest groups that make up the university.

Student discourse today puts a heavy burden upon the word credibility. It is loaded with connotations of legitimacy, honesty, trustworthiness, fairness and good will, as well as its traditional meaning of believability. Credibility, in this sense, provides a succinct way of counterpoising these qualities against efficiency, expedition and a literal application of regulations. The committee attempted to balance these considerations. It believes that whereas a variety of systems might work, that the system it proposes is more acceptable to students and faculty together than many others. It believes that the considerations of acceptability are at least so important that it is worth trying to perfect a hierarchy of courts and panels that includes an all student court.

Credibility, of course, is a two way street. What is most appealing to students may appear biased and unreliable to faculty. What seems fair and efficient to faculty may appear biased and unreliable to students. The committee thinks it may be useful to outline briefly the elements of mistrust that must be weighed, and to then apply them briefly to some of the alternatives proposed as disciplinary procedures.

Attitudes of Some Students:

1. Some students see the university as being administered too often for what appears to be merely administrative convenience. In matters of importance to students the student input is thought to be non-existent, tokenism, or too heavily discounted. Chronic problems with parking, food services, dormitory life, and fees and charges tend to exacerbate this mistrust.

2. University life is fragmented and impersonal. Few students have continuing contact with administrators and a relationship of mutual respect and trust exists between few students and administrators or faculty.

3. A politics of frustration and anger nationwide has produced a severe estrangement between students and most institutions, including universities. The university is perceived, especially by activist students most likely to be involved in political disciplinary problems as captured by the establishment.

4. A new litigiousness and contentiousness is felt throughout the society and tends to make some relationships between students and faculty or administrators adversarial and combative.

5. Students feel that unless procedural safeguards are provided, the administration will act arbitrarily and capriciously. This mistrust is not personal to our administrators. There has been an active promotion of such feelings incidental to the promotion of statements of

student rights and responsibilities all over the country. Freshman college students from many cities, especially those from which this university draws its students, come to the university fresh from battles over statements of student rights and responsbilities for high school students. National professional and student associations have been vigorously promoting such codes for the last decade.

6. The legitimization and acceptance at all levels of civil government of new forms of rhetoric and protest make it confusing to students as to what is acceptable and what is not. Attempts on the part of the university to clarify what techniques of protest are not acceptable may be seen as repressive actions calculated to frustrate dissent and free debate.

7. A highly charged political atmosphere ranging over a variety of important social issues has made many students suspicious of any institution that insists on its neutrality. The values of free inquiry and impartiality may not be of equal worth in the minds of students to moral and political commitment, and therefore not worthy of particular respect. Attempts to put such values in a preeminent position may appear conspiratorial and morally irresponsible.

Attitudes of Some Faculty:

1. Many members of the faculty and administration are convinced that too many students do not appreciate how fragile and vulnerable an institution a university is. Nor how often and at what costs freedom of inquiry has been severely curtailed in this country. Many feel that students not only do not know of the risks they are taking, but that they do not care. And that the costs of such risks fall not on such students who will soon leave the institution, but upon the staff, which remains.

2. Many feel that students are without effective continuity in policy making, and without effective informing mechanisms from their presumed constituents. Student participants in decisions are thus seen to speak merely for themselves, whimsically and without accountability to those they presume to represent.

3. Lassitude and indifference of most students to the exercise of student power and to student elections is seen not as a dismissal of of a meaningless process which could be vastly strengthened by giving students "real power," but as an expression of genuine and fundamental disinterest or of satisfaction with a system of minimal student input. To increase student power is merely to increase the power of some students. The majority of students are thought to be concerned with substantive policies, not participation, and if an effective means of informing and correcting administrative policies is devised there would remain little interest in "student government."

4. Contemporary students are seen as highly individualistic and with little identification with the institution, hence unwilling to accept responsibility for the institution's well-being, or to take stands unpopular with other students when the institution's needs require it.

5. Students are seen to be incapable of detached judgment of their own except when faced with incontrovertible proof of grave misconduct. They are seen to be partisan and moralistic, and to be too ready to excuse or justify or see mitigated invasions of the interests of non-students or students with different priorities.

6. Students have little appreciation for or understanding of the financial jeopardy of the university. They are too quick to buy small advantages of freedom of protest at enormous and unnecessary costs to the institution, and to respond to any concern for the costs involved with indignation and accusations of insensitivity and avariciousness.

7. Many students are willing to leave disciplinary administration to the administration, or to the faculty alone.

8. Students may overlook the long range costs of policies, or the inescapable impracticality of their details of administration.

9. Student leadership and the student population itself turn over so rapidly that students frequently have no commitment to what previous student leaders or organizations have done. This results in a policy churning that fatigues administrators and makes planning with students very difficult.

There are other factors, of course, but these illustrate the atmosphere in which - at its worst - a disciplinary system must operate. What are some of the alternatives proposed to the committee?

A. The use of outside adjudicators. It has been suggested that the university might employ prestigious and highly qualified hearing officers or examiners from outside the university.[12] Some feel that such persons would be acceptable to all parties as impartial and worthy of respect. The committee felt that such persons would be unduly expensive. It felt that the activist student most critical of the procedures would not feel particularly reassured by an outside attorney, perceived as a member of the establishment. It felt that such persons would be unfamiliar with academic values and that from one such person to another we might find a capricious and arbitrary shifting of priorities as to order, free speech, symbolic acts, etc. It felt that such persons, particularly since they would almost certainly have to be trained as lawyers, would

12. See, e.g., Report of the President's Commission on Campus Unrest, p. 130, (1970).

confuse constitutional and governmental procedural limitations with those of the university and would be perhaps excessively legalistic in interpreting the regulations. The committee felt that such persons might well be unfamiliar with students or young people and might find it difficult to orient themselves as to the practical aspects of student discipline.

B. The use of an administrator acting alone. This, of course, is the traditional model of the hard-nosed (or sweet tempered) Dean of Men, dispatching summary justice fairly and quickly. The committee accepted this procedure when elected by the student defendant, and in the case of non-punitive administrative action, and in the case of limited kinds of punitive action. The committee rejected it as the only format because it was persuaded by numerous comments from administration officers that such exclusive jurisdiction might place the administration unduly in a prosecutorial/adjudicative role; that it might disrupt essential relationships and rapport with students necessary to counselling and student affairs; that it would arbitrarily deny student participation in the decision and thereby forego the insight and experience of students; and that it would appear to many students as involving an unfair mixing of the functions of investigation, prosecution and hearing. The committee also felt that such a procedure would exclude the faculty from significant participation in a process in which they have substantial professional interests.

C. The use of a student-faculty committee. Such a format has been recommended, of course, for the most serious cases, those involving expulsion. The committee felt, however, that the strong student interest in exclusive student adjudication of less significant offenses was legitimate. The committee does not think the student interest is paramount above all other considerations, and if the student court does not prove itself a reliable and fair and efficient adjudicative body, given time and experience, then its continuance should be reevaluated.

Objectives of the Recommendations

It was suggested to the committee that it summarize in brief paraphrase the objectives it sought by the various changes in the present procedures. The following comments attempt to do this:

Chapter One. Policies, Principles, Rights

The committee felt it important to develop in the body of the new code itself a set of statements on policies and controlling principles. This chapter parallels many of the provisions of the statement on student rights and responsibilities. It attempts to elaborate and emphasize the intent of the recommendations to provide an informal adjudicatory system which does not unreasonably import legalistic standards and procedures. It recognizes the unforeseeability of many aspects of student discipline and qualifies its requirement of notice and set procedures with a limited tolerance of extraordinary procedures for extraordinary circumstances. It recognizes a strong interest of students in

the disciplinary processes. It recognizes the broad scope for limited disciplinary action by administrators in cases too trivial for formal action. It explicitly recognizes the relationship between discipline and counselling, and between both of these and the educational objectives of the university.

Chapter Two. Organization, Sanctions.

This chapter spells out a system of courts, boards and hearing bodies, and their relationships to each other. It provides for specialty courts (such as the traffic court), for an all student court of general jurisdiction, for a student-faculty committee on appeals that has original jurisdiction in cases so serious in character that the university seeks the expulsion of student defendants, for adjudication by administrators when the student defendant so requests or critical questions of privacy may be at issue, and for appellate review by a faculty committee including the President of the university. The chapter provides for a university representative experienced in litigation to investigate and evaluate all cases, and to present cases on behalf of the university to the appropriate hearing bodies. The appointment procedures of the officers of the various bodies are provided in this chapter, including an executive secretary for administrative purposes and a committee on the judicial system to provide oversight of the processes and to advise the President and the Faculty Senate as to the state of the disciplinary system. The chapter distinguishes appeals as a matter of right and appeals that will be heard only at the discretion of the appellate body, providing appeals by right for those cases in which a significant penalty has been imposed upon the student defendant. The chapter provides explicitly for the scope of review and the manner in which each court or panel will present its conclusions and opinions to facilitate review. The efficiency of the trial bodies will be enhanced, the committee believes, by the guidance afforded by trial briefs and draft opinions, orders and reports to be provided the trial body by the university representative. Sanctions are spelled out, modeled after those of the Model Code for Student Rights, Responsibilities and Conduct of the Law Student Division of the American Bar Association.[13]. A system of sanctions applicable to groups and organizations is also provided. Non-punitive administrative action and non-judicial punishment for less significant offenses is provided. A series of sections are devoted to specifying punishment for certain offenses. A special procedure for administrative termination at the end of given term is provided.

13. Committee on Student Rights and Responsibilities, Law Student Division, American Bar Association, "Model Code for Student Rights, Responsibilities and Conduct, May 31, 1969.

Chapter Three. Functions, Duties, Responsibilities.

In this chapter the committee spelled out in considerable detail the duties of the various officers and members of the judicial system. This was done to inform the responsible individuals and to make the entire system more intelligible and accessible to defendants, counsel, faculty and others who may become involved with it. The presiding officer of the trial bodies is instructed to inform counsel and panel members of the character of the proceedings and of the standard of proof in a model charge, as provided in the code or as provided by the committee on the judicial system.

Chapter Four. Regulations, Codes and Ordinances.

General standards for the establishment of campus wide regulations and of special regulation and rules are outlined. The authority of university agents and staff members is described. Publication standards for rules and regulations are established.

Chapter Five. Special Procedures, Emergencies and Non-Prejudicial Errors in Procedure.

This chapter attempts to anticipate the need for special procedures in extraordinary circumstances. It provides for supplementary special hearing committees, as described in Chapter Two, so that the university response to large scale demonstrations or disturbances disruptive of university processes may be both timely and fair. Procedures for recognizing the state of emergency are provided, with a means for immediate participation by the Faculty Senate. The standard of appellate review as to non-prejudicial errors is explicitly set to avoid excessive legalisms or reversals or merely technical, non-substantive grounds.

Chapter Six. Reform, Changes, Amendments.

A procedure for reviewing and reforming the judicial system is provided.

Models for Disciplinary Administration

In the course of its meetings and conferences, the committee found that much of the debate about student disciplinary procedures centered upon misunderstandings growing out of the choice by different persons of different but unidentified models for disciplinary administration. To the extent that these models are explicitly identified, their assumptions and implications are more easily examined. The committee identified and considered various aspects of seven different models. A brief discussion of each of these may be helpful to the reader.

1. Parental model.[14] There is a long tradition in public and private education and in the common law that treats the institution and the teacher as a parent substitute. The legal doctrine, in loco parentis, permits broad discretion in matters of control, discipline and imposition of duties and tasks. The doctrine has been under considerable fire for a number of years and although badly eroded under this name persists a practical necessity for young children and older students in limited ways. The relationship of the student to the institution as child-parent is not merely one of tyrannical oppression, but may reflect real dependencies. Nevertheless, the greater freedom and independence enjoyed by students prior to coming to the university have made the doctrine appear artificial and ludicrously presumptive. It is anachronistic. It will appeal to very few members of the student body or faculty. It has some residue of value.

2. Contractual model.[15] The basic duties and obligations owed each other by a private university and a student are explicitly and implicity the results of a contract, a bargain struck by the two parties. This is more intelligible and obvious when applied to a school of specialized function or purpose, such as a religious institution of severe and restrictive discipline.[16] The model is very weak when applied to a modern, secular private university for several reasons. First, the university does not offer itself to prospective students as unique or distinct in character and a student might reasonably expect the same freedoms and protections he would enjoy at a contemporary state school of comparable size, function, reputation and curriculum. Second, the student does not truly bargain with the university. Not only are the terms of admission often not clear at the time of his acceptance and may only be revealed after his arrival and during the process of his enrollment, but the scarcity of places in colleges and universities forces the student to accept under a feeling of urgency. This does not constitute such duress as would void or make voidable the contract, but it is a real consideration in the minds of student applicants and will be of interest to courts. Further, the contract appears to be fixed and invariable to the prospective student. He might, if he chose to do so, strike an individual bargain with the institution whereby it would assure him that he could take certain courses, vary his degree qualification from the norm, keep a horse in the dormitory, etc. But it is an atypical student who realizes this or who would attempt it. Ironically, if the terms of admission are made clear, student applicants probably are not significantly affected. Like most persons entering into detailed contracts, the terms are discovered by students in anger and remorse after a dispute arises. For this reason, although advance notice of limitations upon conduct and rights may be necessary for the courts, its effect upon student applications

14. "The facts of life have long since undermined the concepts, such as in loco parentis, which have been invoked historically for conferring upon university authorities virtually limitless disciplinary discretion." Soglin v. Kauffman, 295 F. Supp. 978, 987 (1968).

15. Fischer, Due Process in the Student-Institutional Relationship, American Association of State Colleges and Universities, p. 4 (1970); student work at 81 Harv. L. Rev. supra note 7 at 1145 - 1147 (1968).

16. See A.B.A. Commission Report, supra note 4 at 17; student work at 81 Harv. L. Rev., supra note 7 at 1155 - 1156.

and acceptances will probably be minimal. The committee would emphasize, however, that in spite of its weaknesses the contract model is an important consideration in determining the obligations of and limitations upon the action of private universities.

3. Private government.[17] The university often speaks of itself as a community. The concept is reinforced by the variety of functions and services, the large numbers of people, and the responsibilities of a large contemporary university. The analogy is soon drawn to the functions of government, and suddenly the model - including duties and powers - rapidly takes shape as one of private government.

The private government model may imply a special accountability to the courts, as was imposed in the case of Marsh v. Alabama, where a company town was required to afford certain First Amendment freedoms in effectively "public" areas.[18] The breadth of this analogy as applied to private universities has been explicitly narrowed by a United States District Court.[19] It has been argued that the public function test requires the courts to treat private universities functionally like public universities, but the courts have not supported this reasoning. Further, the private government concept suggests a theory of state action, by which state support of private universities may convert them for limited purposes into state agencies and thereby impose upon them the obligations imposed by the Fourteenth Amendment. Both the applicability[20] and the import[21] of the state action doctrine, however, are very speculative in the area of judicial interference with private university administration. The effect of federal as opposed to state support is in an even more ambiguous theoretical state.[22]

Nevertheless, the functions of the private university that parallel those of a government include policing and adjudicatory powers with significant sanctions attaching. In a society that has developed elaborate protections against arbitrary governmental action, it is understandable that we find considerable anxiety lest private governments act in capricious and arbitrary ways that have high costs to the individual and that would be forbidden state or federal agencies.[23] It is perhaps technically correct to emphasize the breadth of discretion and freedom of private universities, but an insensitive reliance upon these formal rights may provoke deep indignation, unrest and estrangement.

17. The private government concept is a conceptual model facilitating the application of constitutional limitations. Its inherently misleading language tends to ignore the fact that constitutional limitations are aimed at sovereigns, not government-like institutions, and that to reach the latter governmental support, control or enforcement power must be found. Grossner v. Columbia University in City of New York, 287 F. Supp. 535, 549 (1968).

18. 326 U.S. 501 (1946).

19. Grossner v. Trustees of Columbia University of New York, supra f.n. 9. at 549.

20. Powe v. Miles, 407 F.2d 73 (2d Cir, 1968).

21. See e.g., Williams, The Twilight of State Action, 41 Texas L. Rev. 347 (1963).

22. But for standards controlling federal institutions, see Wasson v. Trowbridge, 382 F.2d 807 (2d Cir., 1967).

23. See A.B.A. report, supra f.n. 4 at 17.

4. Counselling and Guidance Model. Another model that is frequently offered by those in student personnel and frequently attacked by those most anxious about campus order is that of the psychological counsellor or the student personnel officer. Proponents often emphasize the need of the campus delinquent for retraining and reorientation. They see the disciplinary procedures as an educational opportunity. Their view of campus discipline is somewhat like that of those who heavily emphasize rehabilitation in the criminal processes, and is subjected to the same attacks of ineffectiveness, inappropriateness and "softness". Nevertheless, the model is promoted as a means of avoiding an excessively or inappropriately judicial scheme. Such persons would avoid any changes in campus disciplinary procedures "....that would substitute a legal structure for an educational approach to the resolution of conduct difficulties."[24]. It seems clear to this committee that this model is appropriate in some campus situations, inappropriate in others. The recommendations of the committee attempt to provide appropriately differentiated procedures for each.

   A special aspect of this model should be noted, however. It is sometimes argued that student courts and student participation in university governance is a valuable educational experience for the student. This civics laboratory approach will benefit so few students that in itself it strikes the committee as a trivial way to justify student participation in university governance. The more common arguments for student participation tend to be those of the interest of students in university policy, the uniqueness of student experience, the responsible commitment of students to educational objectives, and the mutual informing and community strengthening functions of students and faculty working together.[25].

5. Fiduciary Model. Some writers[26]. have borrowed from the law of agency to find standards of conduct applicable to the university-student relationship. The law that has been developed to control those who stand in a fiduciary relationship to another, however, is either so precise or so abstract that it seems to hold little promise of workable guidelines or standards[27]. The ideas that the university is especially responsible for student welfare and that it must consider the student's interests as carefully as its own in acting for or upon the individual student, are important. They are fully accepted by most contemporary universities and certainly by this one.

24. Dutton, Smith and Zarle, Institutional Approaches to the Adjudication of Student Misconduct, National Association of Student Personnel Administrators, Monograph No. 2, January 1969, p. 2.

25. Robinson and Shoenfeld, Student Participation in Academic Governance, ERIC Clearinghouse on Higher Education, Review 1, February 1970, pp. 7 - 10.

26. Seavey, Dismissal of Students: Due Process, 70 Harv. L. Rev. 1406, 1407 (1957) and Goldman, The University and the Liberty of its Students - A Fiduciary Theory, 54 Ky. L. J. 643 (1960).

27. Fischer, supra f.n. 11 at 5.

6. Passive Model. It is sometimes suggested that the university should turn student delinquents over to the civil authorities for prosecution. To illustrate, to break a window is a criminal offense. The university cannot be an effective policer of violence and subversion. The university should only attempt to control its peculiarly educational and community problems and criminal acts are the interest of the state. Further, when a student refuses to pay for damage to the university, the university should proceed to take civil action against him. The committee rejected this model in almost all respects short of those situations of mass disorders, or systematic and calculated assaults on the university and of conduct threatening to the physical security of persons or property in some significant way. The university should not, the committee felt, attempt to handle such conduct as bomb threats or arson as internal disciplinary matters. But short of misconduct of this class the committee felt the passive model unrealistic, since city authorities are unlikely to assume the responsibility of a comprehensive campus security program. Coordination and control of civil authorities is difficult and often impossible. The risk of serious misunderstandings and invasions of student rights seems high. The Faculty Assembly of the university has already by resolution rejected this model as a general solution, although it may be necessary in specific instances. And finally, the experience of other campuses has been that the unnecessary use of police or military forces tends to escalate violence, tension and problems of disorder.

University Resolve and the Adversarial System

The committee would add a final note to its consideration of essential aspects of a university judicial system. The university, after striving in good faith and with responsible care to fashion a disciplinary system, must use it with resolve and with confidence in its own fairness. The courts are not going to impose outrageous or subtle technical requirements upon the complex problems of managing student life. The courts are unlikely to venture substituting their remote and highly abstract perspective of campus life for the view of fairminded and reasonable administrators. It is especially important in a time as contentious and litigious as our own that the university be prepared to take its decisions and actions to court if necessary. The students will not have confidence in the university or its system if it discovers that the university is afraid to go to court, or that it will compromise or settle disciplinary complaints whenever the student threatens to bring professional counsel into the case. The university must act fairly, but once it has done so it should proceed confidently and firmly to the logical consequences of its findings.

PART III - STUDENT DISCIPLINE AND CONTEMPORARY VALUES

Will the Students Let a Student Court Work?

There is serious and reasonable doubt in the minds of many thoughtful people, in and outside the universities, as to whether contemporary student bodies will permit a reasonable system of student discipline to work.

The following excerpt from the Scranton Commission report is illustrative:

> The political nature of most campus disruptions often has undermined traditional disciplinary procedures and rendered them ineffective. Many students and faculty may sympathize with the broader aims of disrupters even though they disapprove of the tactics employed. This distinction between ends and means, never entirely sharp, can easily become obscured in the aftermath of a campus disturbance. The disciplinary tribunal may be unwilling to impose meaningful sanctions, and if it does it may risk losing broad support within the university. Moreover, because campus tribunals usually lack the sanctions as well as the respect that protect a court of law from disruption, the proceedings themselves can become the focus of mass disturbances. In sum, disciplinary hearings for those involved in disruptions are apt to become political circuses rather than procedures for determining culpability and for imposing appropriate sanctions.[28]

A more concrete illustration may be seen in the case of a disciplinary proceeding at the University of Wisconsin:

> The events of the trial were anything but consistent with due process. Some 200 students were in the audience and every witness who took the stand had to perform on a stage. The students pounded and shuffled their feet. This stage setting affected the attitude of the witnesses. It affected the student who was being tried. He said things to please his friends. His attorney said things to please the student's friends. The upshot was that there was no litigation on the facts in the case. It was a circus; and it all resulted from the anxiety over due process. The proceeding carried all of the nomenclatures of due process but there was not a fair hearing. Because of the forum the boy insisted upon, the fact questions in the case were not fairly tried.[29]

28. See supra f.n. 26 at 129.

29. Cates, supra f.n. 3 at p. 40.

The question is thus made quite different for the "political case" and for the ordinary routine of campus discipline. This difference is not merely a function of the hostilities or suspicions outlined in Part II of this report, it is also a function of a coalescence of interests and identity among students into a new subculture that sees itself as discontinuous from the older community and institutions. This new affiliation may be exclusive and antagonistic in character. And this antagonism may lead to sentiments such as the following comment in an article on the Weathermen, "...while most students, even most radicals, do not agree with the Weathermen, they are loath to turn them in because they consider the police even more evil."30. Such an attitude not only justifies conduct, but it justifies non-cooperation with institutions that themselves may be compromised by the establishment and it justifies subversion of processes which such institutions have devised for their protection.

What Is to Become of Our Universities?

Events of the last few years have led many people to fear a radical reorientation of our universities, a reorientation threatening the most basic principles of intellectual neutrality and the university as an objective and impartial commentator upon the social processes. It is not that universities have a clean record on impartiality, but that they have given careful lipservice to neutrality, and the lipservice itself has had the value of providing a kind of consensual limit upon the acceptable politicalizing of the university. When this limitation is abandoned, then there may be serious costs to academic freedom. The following comments by Professor John P. Roche of Brandeis are illustrative:

> "Which brings us to the crucial point: As far as Brandeis and probably 300 institutions of higher learning in the United States (who went through the same drill) are concerned, it is Officially True that the United States is 'repressive,' that the Indochina war is an immoral, imperialist foray and that war-related research is wicked. Suppose, then, you are a professor or a student in one of these schools, and you happen to believe that the United States is one of the least repressive societies in human history, that the war in Indochina is not immoral and imperialist, and that war-related research is not necessarily wicked. What are you supposed to do? Shoot yourself? See a psychiatrist? Change your mind? Shut up? Perhaps the next thing to expect is a campus bumper-sticker: 'The Panthers: Love Them or Leave!'
>
> "For me this is not an academic question. As I pointed out to my colleagues as politely as I know how, I not only disagree with everything they voted, but I also object on fundamental principle to such dogmatic safaris - even when I happen to share the substantive view of the majority. Though I am, for example, a militant supporter of Israel in the Middle East, I would repudiate any effort to put the university on record as pro-Israel. This kind of mechanical Truth-finding is a pervasive violation of academic freedom, designed to cultivate a conformist sect, not a community of free minds."31.

30. The Washington Post, B 2, Column 4, Sunday, Nov. 15, 1970.

31. John P. Roche, "On Being an Unfashionable Professor," The New York Times Magazine, Oct. 18, 1970, pp. 30-31, 80.

One of the most confusing aspects of university disturbances has been the mixed loyalties and unpredictable conduct of faculty members. Radicalizing the faculty or sufficient portions thereof to legitimatize student conduct in the eyes of undecided students may be a deliberate strategy on the part of those engineering protests.[32] Involving the faculty may also disrupt the attempts on the part of the administration to maintain campus security, either because the administration has failed to involve the faculty sufficiently,[33] or because the faculty's conception of itself - particularly in regard to teaching assistants, instructors and very junior members of the staff - is as closer in interests and values to the students than to the balance of the university community.[34] Still another source of faculty participation is the traditional liberal mistrust of force (especially the use of police) and the confidence that student conduct against the university is really grounded in misunderstandings or a lack of "dialogue" which can be remedied with talk, good will, and tolerance.[35] These are important factors in the struggle of the universities in moments of crisis to define and pursue goals and plans of action.

This last set of attitudes and others affecting university-student relations within the control of the faculty are further confused by the confusion of institutional functions of the university with the democratic political model.[36]

32. Searle, "A Foolproof Scenario for Student Revolts," in Gerberding and Smith, The Radical Left: The Abuse of Discontent, (1970), pp. 157, 166.

33. Hook, "The Prospects of the Academy," in Gerberding and Smith, supra note 3 at pp. 201, 203-204.

34. Davidson, "Campaigning on the Campus," in Cockburn and Blackburn, Student Power, (1969), pp. 327, 340.

35. Rudd, "Events and Issues of the Columbia Revolt," in Weaver and Weaver, The University and Revolution, (1969), pp. 133, 135-137.

36. "A university...is set up to discharge very special functions and cannot follow the democratic model. A university's functioning as a university, like that of other specialized agencies, depends upon an expertise that is inherent in its very purpose. A democratic political system aims at the well-being of its people, and no citizen, no matter how wealthy or clever, has a monopoly of knowledge in the ways of attaining this goal. Among other things, it is the intentional vagueness of this endeavor that distinguishes a democratic society from a totalitarian one in which all energies are mobilized for an ideological goal set by the self-appointed leaders of the system. On the other hand, certain institutions within a democratic society do have clearly defined purposes, and these, to be attained, require skill, knowledge, and experience. Even that arch-enemy of bourgeois society, Friedrich Engels, in a little known essay, 'On Authority,' written in 1873 against certain anarchist critics of Marxism, warned against undermining the authority wielded by experts in the running of railroads, ships, or factories. A university is not a factory or a means of transportation, but the need for expertise in the discharge of its appointed tasks is just as great. The university's special mission requires the authority of the teacher, and the communication of knowledge is impossible without hierarchy and discipline. The different roles which professors and students play in the university are built into the essence of the institution." Lewy and Rothman, "On Student Power," 56 A.A.U.P. Bulletin 179, 180 (September 1970).

In addition to the costs to academic freedom, successful politicalizing of universities may result in very substantial economic costs to the institutions. These may result from the alienation of donors,[37] or from the loss of tax concessions calculated to promote non-political educational institutions.[38] Still another economic cost may result if the universities are held liable for discontinuing classes as a result of demonstrations when courts feel that the university might reasonably have avoided such cancellation or when courts feel that there is a contractual obligation to refund monies paid for classes not held whatever the reason.[39]

At a time when alumni and friends of universities may be called upon to interpret them to the society at large and to defend them from attempts at repression by an offended society,[40] the universities are seen as one of the sources of social disorder and student disorder is perceived as a popular political target.

In this complicated context of dependencies and vulnerabilities, some faculty feel that student antagonism to the well-being and student indifference to the vulnerability and fragility of the universities is treacherous, subversive and deserving of the severest repression. If "survival itself is in the balance,"[41] the universities, such thinking runs, should purge themselves immediately and ruthlessly of those who threaten it.

The Committee's Response

In addressing these two questions, of the practicality of a student run student court and of the threats to the survival of private universities, the committee attempted to weigh carefully the full range of viewpoints, reactions and prescriptions generated throughout the nation and the national community

37. "How much more fragile this tradition of generosity seems now, when many fathers do not understand their sons; when the world of the father seems immoral to many sons and the world of the sons seems immoral to many fathers." Brewster, "Report of the President," Yale University, 1970.

38. Field, "Tax Exempt Status of Universities: Impact of Political Activities By Students," 24 The Tax Lawyer 157 (1970).

39. See e.g., Paynter, The New York University, 39 Law Week 2258-2259 (1970).

40. "...we would not long survive if the society became meanly hostile to the university...So Yale has an enormous stake in the missionary role of her alumni, to explain why a university must take the risks of freedom, and to champion our privileges and immunities in the public interest." Brewster, supra note 3.

41. Ibid.

of colleges and universities by the events of the last few years. The committee did not summarily dismiss any fear or any anxiety. It believes that the threats to universities from bombs and similar violence, though of low probability for any given institution, are real and especially so to large, urban, Eastern universities, such as our own. It believes that student recklessness, though apparently ebbing at the present time, may be provoked again by political factors utterly beyond the control of the colleges and universities. It believes that student appreciation of the values of academic freedom and of the integrity of universities has never been widely shared and that the atmosphere in the country today of hostility to traditional institutions, corporate activities and political bodies will make it difficult to communicate such values to some students. It believes that the sub-culture of contemporary students includes a minority of students with values inconsistent with the university as an institution, and a hostility and readiness to act against the university that is a genuine threat to the universities and their students and staffs.

The committee recognizes these negative factors. Common sense and realism require it.

Nevertheless, the committee sees a number of hopeful signs, here and on the national scene. The use of violence by student radicals has disturbed many students. The decline in interest in the Vietnam war appears to be a function of changes in the draft law and a declared policy of disengagement, both of which will presumably continue. The sense of outrage and passion provoked by ecological concerns and similar movements are less profound and explosive than those provoked by war and killing, and the new interests of students may emerge in more rational and traditional political strategies. Student reactions to the excesses of last spring have been shaped partly by an awareness of the personal costs to individuals that seemed trivial last year but now may have impact upon jobs, admission to graduate programs and qualifying for professional licensing, such as in the case of certain bar examination prerequisites. Students may have begun to appreciate, too, how fragile and insecure a thing, how consensual and cooperative, a university really is. Further, students may have tired of and abandoned commitments made in the heat of the horror of last spring's Kent State and Jackson State events. Political programs ambitiously begun deteriorated in many campaigns to a negligible force. Students have now "been through" so wide-ranging a variety of protest experiences that the novelty of most acceptable techniques of demonstration and protest is gone the harder, less interesting and routine aspects loom much larger. National protests appear to be attracting fewer people and holding their loyalties and commitments less securely. The country, at least for the moment, appears to be calming down somewhat.

On our own campus the committee has been impressed by the willingness of students to cooperate in the fashioning of practicable solutions. While suspicious of administrative and faculty arbitrariness, students have still shown a patience and dilligence in striving for reforms that reveals an underlying confidence in the institution. The long roads to the Statement on Student Rights and Responsibilities, to the establishment of a student court, to the enlargement of student policy making participation, and of this committee

itself have persuaded the faculty members of the committee that there is a reliable and substantial body of student leadership sympathetic to the values and dilemmas of our university, and willing to work constructively over long periods with the faculty and administration.

The future is not predictable. Emergencies may arise. Confidence and mutual trust may disappear. But the committee feels that the prospects for a workable student disciplinary system along the lines of its recommendations are very good. And the committee has attempted to provide for those emergency situations in which the normal processes would prove unworkable.

The committee feels that the mistrusts described in Part II and the risks and unhappy experiences described in the first two sections of this part are real but pathological. The committee feels that they are uncommon, unnecessary to the goals of those who act them out, and that they will increasingly lose the support of thoughtful, responsible and concerned students.

Does this mean that the university will not face further disturbances? Of course not. Does it mean that in a situation made inflammatory by national political conflicts and with an influx of numerous, irresponsible strangers the university will have a disciplinary system that will guarantee business as usual? Of course not. What the committee has sought is not some utopian, authoritarian scheme of instant and procrustean justice. It has sought a practical, adaptable system of student discipline that includes reasonable and workable student participation. The committee think that its report encompasses such a system.

The committee would emphasize - as it has done repeatedly in this report and in other special reports - that we must continue to reexamine, to learn and to adapt. This involves frustrating and often tiring reopenings of controversies laboriously put to rest before. But that is the price of perfecting a system that does justice to students, staff and the institution, and that promotes those values and processes that we have corporately committed ourselves to in joining the university.

Finally, the committee would reiterate that a wide variety of plans are workable, that the critical factors are not satisfied exclusively by one format or another. If the university is to solve these problems as a community, no group or faction should commit itself rigidly to some form, but should guide itself by those principles most widely shared in the university and by which the committee guided its own deliberations:

That the university will respect the student defendant and will deal fairly with him;

That the university will protect the right of students and staff to study, to teach and to be free of unreasonable encroachments upon their lives, values and work; and

That the university will promote and protect the right of individual students and staff and of groups within the university community to the full, free and responsible expression of our academic freedoms.

A RESOLUTION CONCERNING COMMITTEES OF THE FACULTY SENATE (70/6)

Whereas, the University can best be served by an efficient committee structure within the Faculty Senate, and

Whereas, the present structure has become unwieldy and has some overlapping jurisdictions, therefore

BE IT RESOLVED BY THE FACULTY SENATE OF THE GEORGE WASHINGTON UNIVERSITY THAT:

1. Section 11 of the Bylaws of the Senate is amended to read as follows:

2. Section 11. Standing and Special Committees

In addition to any other committees that the Senate may establish on its own initiative, or by direction of the Assembly, or by request of the President, there shall be standing committees for the following areas:

(1) Academic Affairs--relating to educational policy, research, and university objectives.

(2) Faculty--relating to appointments, remuneration, promotion, performance, and development.

(3) Professional Ethics and Academic Freedom.

(4) Student Affairs--relating to admissions and advanced standing, scholarship, and student relationships.

(5) University Operations--relating to administration, athletics, finances, library, physical facilities, public ceremonies, university development, and the university's relations with the community.

Membership in the standing committees shall consist of voting members who shall be Faculty in full-time service, and nonvoting members who shall be officers of administration whose duties fall within the committee's scope and who have been appointed to the committee by the President.

Subcommittee for Review of Senate Committees

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Money Squeeze Forces Change

Crisis and Reform at GWU

By Eric Wentworth
Washington Post Staff Writer

Three years ago, George Washington University was charging an annual tuition of $1,625 and took in a total of $16,751,000 in student fees.

It was operating in the black, and President Lloyd H. Elliott predicted at the time that it "will continue to do so."

This year, tuition has reached $1,900 and the take is up 40 per cent—more than twice the enrollment growth — to an expected $23,555,000.

But far from prospering, GWU today, like hundreds of other private colleges and universities across the country, faces a financial crisis.

What has happened is that costs have gone up faster than income, and further major increases are not in sight.

The "Sumptuous '60s," when private colleges could count on public and private funds to match growth and gradually rising costs, are over. The Good Life of Academia is being called to task, and in their quiet way, the new money crises may be causing far more academic reform than all the campus radicals of the past few years put together.

At GWU, Washington's second largest university, which at least partially reflects trends elsewhere, costs have shot up because:

• Salaries for GWU faculty have risen sharply, with full professors—the extreme case—earning 75 per cent more today than five years ago. Pay is also higher for other employees, who outnumber the teaching staff by about 3 to 1. At the same time, normal teaching loads have been cut from 12 hours weekly to 9.

• The university has continued to try to offer its now 15,000 students a full spectrum of studies. This has meant maintaining a costly investment in "hard sciences," even though these subjects today draw fewer students than at the dawn of the Space Age, and many students are flocking instead to "human concern" subjects like political science and sociology.

• Inflation, both a cause and effect of salary increases, has been bleeding the GWU budget through many pores.

Even at well-endowed universities that can absorb short-run deficits, fiscal pressure may force reassessment and reform.

At GWU, which has little endowment and thus cannot afford "red ink" at all, reassessment has already started.

This fall, to head off "an unmanageable deficit," Elliott imposed an across-the-board hiring freeze aimed at slashing costs by possibly $250,000 this year.

Word is spreading that one vacated faculty post in German, and two in chemistry, won't be refilled.

Elliott's aides have launched a revolutionary—and controversial—project applying Pentagon-style budget yardsticks to sacrosanct academic programs.

Finally, Elliott earlier this month joined presidents of Washington's four other private universities in ordering dramatic steps to pool their "crisis in finance."

Their vehicle for joint endeavor is the Consortium of Universities, which is supposed to let graduate and advanced undergraduate students take courses on any member campus in the area. After six sluggish years, the consortium's potential for sharing facilities and combining duplicate programs — pruning weak courses here, nourishing strong ones there—is still largely unrealized.

The chairman of the GWU German department reportedly indicated at one point that he wanted no part of such cooperation. He was warned that the university might instead drop his graduate program, which drew an uneconomic 23 students in five classes last spring.

The recalcitrant professor resigned as chairman within a month, GWU sources recall, and recently announced he would quit the faculty altogether — creating one of the vacancies that won't be filled.

"We are going to have a consortium graduate program in German," one GWU official vows.

The consortium is a dramatic example of the kind of reforms the new deficits are forcing private colleges to make. There are others of an internal, less visible sort that are equally important.

"Universities are notoriously poor in their accounting," says William D. Johnson, GWU's budget boss who directs the fiscal accountability drive on its Foggy Bottom campus. He is backed with $163,000 from the Ford Foundation, one of several grants to spur new campus budgeting systems around the country.

"Most administrators these days," comments Joseph A. Kershaw of Williams College, who worked on these grants for Ford, "are just dying for better ways to get information, better ways to make decisions."

For starters, Johnson has drawn up and distributed a report that uses a simple formula to show an income-cost comparison and cost-per-credit-hour for each department. Some of the results are startling.

Setting a department's tuition and fee income against its direct expenses, Johnson found that for last year anthropology spent less than 20 per cent of its "income" while chemistry spent 122 per cent. Among others, the art department spent about 45 per cent, biology 54 per cent, economics 53 per cent, English 35 per cent, geology 95 per cent, mathematics 69 per cent, physics 94 per cent, psychology 31 per cent and sociology 30 per cent.

Dividing direct expenses by credit hours taught, Johnson's formula showed costs per credit hour last year which ranged from $12.32 for anthropology and $14.16 for political science all the way up to $63.22 for physics and $83.11 for chemistry.

A more complex Johnson formula compares what a department hypothetically "earns"—based on a net enrollment load—with its actual budget allocation.

One goal of this approach is an ability to gauge each department on whether, in effect, it pays its own way. Some departments, jammed with students, subsidize others that have slack enrollments and thus, by these yardsticks, higher costs.

The broader aim is to inspire frugality throughout the faculty, in hopes that departments and individual professors will find ways to spend university dollars more economically.

The GWU faculty is better off financially today than it was five years ago. Soon after he arrived in 1965, Elliott and the GWU trustees agreed to raise faculty salaries by this year to the national "A Scale" standard set by the American Association of University Professors.

Attaining the "A Scale" has meant granting the heftiest pay boosts to full professors, who were lagging well below it. Compounding the cost, the GWU faculty was top-heavy with full professors since a number had been promoted in lieu of ingrade salary boosts before.

Average pay for full professors has risen from $14,666 in 1967-68, for example, to $20,931 this year. Overall, faculty salary increases account for nearly half the growth in GWU's instructional budget from $9,039,000 to $14,088,264 over the same three-year period.

Ironically, the AAUP last fall discarded its old rating system. It found that its top scales were becoming too easy a mark, and that its system failed to distinguish between different types of institutions.

Under the new AAUP ratings, which pit GWU against other large universities, one administrator concedes, "Our professors look decent but our lower ranks look horrible."

Administrators and professors at GWU insist, however, that reaching the now-defunct "A Scale" this year has paid dividends. Morale, they say, is better. Younger faculty members are sticking around, and recruiting potential is said to be greater.

When one senior professor died earlier this year, his department chairman reportedly received 157 applications even before advertising the vacancy.

The money crunch is also forcing a re-examination, faint so far, of the fabled lifestyle of the college professor—hard questions like how much time faculty members should have free for research or consulting, and to what extent a university can any longer support either teaching or research in obscure and little-attended subjects.

Faculty members deny that trimming teaching loads from 12 hours to 9 has brought a softer life. You must, they contend, weigh the total number of students and the types of courses. They say a lecture takes more advance work than a seminar, two courses mean greater sweat than two sections of the same course.

"A number of times under a 9-hour load I've taught a lot more students than under a 12-hour load," says John A. Morgan Jr., associate professor of political science. "The more students you have," he adds, "the more people you have wanting to see you."

Aside from teaching classes and meeting students informally, the faculty member is expected to share his department's housekeeping chores and endure sometimes endless committee meetings.

Though "publish or perish" pressures are said to be light at GWU, a professor must also spend time keeping abreast of his subject. In physics, Prof. A. Joseph Zuchelli's field, new developments are legion.

"If he (the professor) doesn't work in his discipline," Zuchelli contends, "he becomes incompetent . . . so you have to pay for that work."

On the other hand, though, GWU's faculty handbook still allows professors up to one day a week for "outside consulting and other professional activities." To the university, this is viewed as public service. To the professor, it often means extra income.

Defenders of lower teaching loads also insist that it helps control one of a university's common but costly excesses: the proliferation of courses. Often professors' ambitions, rather than students' demands or needs,

add new entries to the catalogue.

GWU records show a large number of courses with uneconomically small turnouts. Last spring, for example, 10 per cent of some 851 undergraduate classes enrolled five students or less, and 24 per cent had 10 students or less. At the graduate level, 24 per cent of 574 classes drew five or less, and 48 per cent, 10 or less.

Small classes have long been viewed as an educational plus. But GWU's fiscal crisis is inspiring a second look at just how small they need to be, and proposals for new courses may be judged on their likely enrollment.

Uneconomic classes also result when departments keep offering the same array of courses every year while students' interest in the subject dwindles.

In fact, according to indicative if not precisely comparable records, GWU students showed a remarkable shift in tastes from the spring of 1961, four years after sputnik, to last fall.

While total enrollment swelled more than 50 per cent in that period, undergraduate and graduate physics majors dropped to 36 from 61, chemistry majors to 60 from 76, and mechanical engineering majors to 57 from 120.

At the same time, political science majors nearly quadrupled to 315 from 81. Psychology majors increased to 333 from 210, and anthropology majors to 92 from 50 (a total that also covered sociology).

Since most disciplines demand a certain number of required courses, wholesale slashing of a department's curriculum is ruled out as long as the major is offered. But GWU economizers believe some optional courses can be dropped. Or, they feel these and other courses can be offered only in alternate years or consolidate with offerings of other consortium universities.

A university can't pluck a full-time professor out of the physics department if students evaporate there and make him teach, say, circumpolar cultures. Nor, given the sanctity of tenure, can it simply "lay him off" like an auto worker.

Part-time professors on the other hand—and GWU has roughly 330 of them—can be dropped if their courses lack drawing power.

Moreover, this year's hiring freeze offers the chance, as vacancies occur, to lop off faculty slots altogether or shift them to departments where student pressures are mounting.

GWU administrators have made it clear that Johnson's income-cost formulas will be one tool in making such reallocations. Faculty reaction, predictably, is mixed.

Some professors, taking the new austerity to heart, have come up with economy moves themselves. Others resent a "cash register" approach. Still others see some merit in the new budgeting scheme, but insist it is no substitute for sound academic planning.

"I'm very concerned," says Dean Harold Liebowitz of the School of Engineering and Applied Science, "with any formula based on the number of people being taught."

You can offer a "marvelous course on sex" and draw hordes of students, Liebowitz adds, "But I don't think that means you're outstanding."

Liebowitz in three years has already bolstered the engineering faculty and facilities, which still cater largely to government employes doing part-time graduate work. He has ambitious plans.

But with undergraduate enrollment (278 this fall) well below capacity for several years, his school is expensive by new income-cost standards. Its future role, at least as a separate GWU venture, is on trial.

"What we're groping for," says the dean in reply, "is some formula with rewards for the schools or departments that are strengthening the university." He clearly puts his school in that category.

Harold F. Bright, provost and vice president for academic affairs, doubts that such relative factors as quality or importance can determine which programs GWU should build up or curtail

"The only real basis for this kind of decision," says Bright, a statistics professor as well, "is the market place —what do people want." But he also admits that when it comes to market research on what future students will want to study, "We're pitifully informed."

Elliott himself believes students come to GWU from all 50 states because it is in the nation's capital, an obvious place to study political science, international affairs, history, economics, law and —with local museums and libraries—art and literature. He sees growth prospects in these subjects.

In the sciences, however, Elliott predicts a trend at GWU away from something-for-everybody toward smaller, top-quality programs possibly tied into the consortium.

GWU's president is enthusiastic about Johnson's budget innovations. "I think," he says, "that we will know more about our actual costs and, on the other side, our income, than 90 per cent of the colleges and universities in the country.

"I would be the last to claim," Elliott continues, "that all our decisions, or even half our decisions, ought to follow the financial lines revealed by this information. But, without this information, you're still flying by the seat of your pants."

While rising academic costs play the most dramatic part in GWU's financial crisis, they are only one piece of the picture. "A university," Johnson observes, "is just like a city unto itself."

According to H. John Cantini, Jr. vice president for administration, the GWU payroll includes 1,650 full-time, nonacademic employees—from secretaries to janitors—or more than three times the 500 full-time professors.

They, and about 420 regular part-time workers, are also earning more these days. The university granted them a special 7 per cent cost-of-living raise last year that it cannot afford to repeat.

The university's security budget, because of student demonstrations and rising crime, has more than doubled to an estimated $360,000 this year from $160,000 only two years ago, university officials said.

"The Cambodian invasion," one official confides, "cost us about $50,000 out-of-pocket expense" to replace broken windows, erase slogans from walls, and pay overtime.

Last year, Cantini reported, GWU also had a $363,000 telephone bill, a $410,000 electricity bill, a $107,000 coal and oil bill, a $21,000 gas bill and a $28,000 water bill.

As the university pursues its ambitious building program, these and other costs keep increasing. The basic outlay for maintaining and operating its basic physical plant totals an estimated $3.7 million this year, against $2.7 million three years ago.

These and the other figures in this story exclude the medical school, which is in so much financial trouble that GWU is pleading for special federal aid. The medical school expects a deficit up to $2.4 million this year atop last year's $2.2 million. The university has offset these losses only by using income from certain hospital services and drawing down a Ford Foundation endowment grant.

The GWU building program in general is aimed at providing needed classrooms, library space and other facilities, and at giving its hodge-podge campus a long-lacking "face".

But two projects, the Henry and Edison buildings along Pennsylvania Avenue, have still another goal. Together, according to Johnson, they represent an endowment in the form of real estate with as much potential yield as $40 million conventionally invested in stocks and bonds.

At present, only about $5 million of GWU's modest nest-egg of invested funds can provide income for academic and general operations. Yearly yield is running about $285,000.

Annual giving should provide about $1,000,000 for the operating budget this year. While Dr. Seymour Alpert as vice president for development has brought new zest and promising results in fund-raising from alumni and other private donors, however, the bulk of these contributions go to the building program.

Operating income from "other sources" is budgeted at $767,000 this year, an increase that reflects a doubling of parking fees on GWU-owned property. But this, too, meets only a small fraction of the university's money needs.

The Henry Building at Pennsylvania and 21st Street, already built and leased for up to 30 years to the National Academy of Sciences, is earning gross income of about $710,000 a year. After loan payments, GWU retains about $180,000.

The Edison Building on Pennsylvania between 19th and 20th Streets, scheduled for completion in the spring of 1972, will be leased to Potomac Electric Power Co. for a similar period with projected gross yearly income in the area of $1.3 million. GWU will net about $350,000 annually after debt repayments.

For the time being, net income from these two buildings is earmarked for the GWU building program. But Elliott hopes that by the time the annual tuition rate hits $2,500, at least some of this money can start supporting operations instead.

Relentlessly rising tuition rates pose, in Elliott's view among others, the greatest threat to GWU's future survival as a private university.

So long as GWU must rely so heavily on tuition income to finance year-to-year operations, it says it must keep raising the rates to stay abreast of costs. The university is projecting annual rate increases of $150 for at least the next three years.

But with growing competition from less expensive public colleges and universities, Elliott says grimly, "One of the hard facts of life is that private institutions cannot continue doing this without pricing themselves out of the business of higher education.

"We are really running a race here," he adds, "between this push of increased costs and our institutional efforts to generate income from other sources."

Elliott, like many other university presidents, would like the federal government to rescue them with a new, massive program of general-purpose aid. But as things stand, even if skeptical Nixon administration officials came around to endorsing this plea, the government's own budget could hardly afford it.